Office-Supreme Court, U.S.
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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 74

PHILIP JEROME STILES,

Petitioner,

vs.

UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 9, 1967
CERTIORARI GRANTED MAY 6, 1968.

Supreme Court of the United States

OCTOBER TERM, 1968

No. 74

PHILIP JEROME STILES,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Criminal Docket # 7295

50 App. U.S.C. 462

THE UNITED STATES

vs.

PHILLIP JEROME STILES

ATTORNEYS

For U. S.:

Frederick W. Faerber, Jr.
U. S. Atty.

For Defendant:

Charles J. Rogers, Esq.
John A. Notte, III, Esq.

CASH RECEIVED AND DISBURSED

DATE	NAME	RECEIVED
Mar. 17, 1967	Charles J. Rogers, Esq. Notice of Appeal	5.00

DATE 1966	PROCEEDINGS
Sept. 16	Indictment returned and filed. Summons ordered and issued.
22	Summons returned duly served and filed.

DATE 1966		PROCEEDINGS
Oct.	7	Appearance of Charles J. Rogers, Esq. for Deft. filed.
		Case called for hearing. Asst. U.S. Atty., W. J. Gearon for Govt.
		Charles J. Rogers, Esq. for Deft.
		Deft. arraigned and enters a plea of Not Guilty.
		Bail is fixed in the sum of $1000.00, pers. recog.
		Appearance Bond filed.
Oct.	17	Continued to next term.
	31	Deft's Motion For Examination, etc. filed.
Nov.	7	Case called and continued to November 21, 1966.
	21	Case called for hearing, Charles J. Rogers, Jr., Esq. for Deft.
Nov.	21	argues Motion For Examination, etc.
		Asst. U.S. Atty., A. Wiley in statement re Deft's motion.
		Motion denied.
Dec.	1	ORDER entered and filed denying and dismissing Deft's Motion For Examination, etc.
	6	2 Govt. Witness Subpoenas returned duly served and filed.
		1 Govt. Subpoena Duces Tecum returned duly served and filed.
		Appearance of John A. Notte, III, Esq., as co-counsel for Deft. filed.
1967		
Jan.	5	3 Govt. Witness Subpoenas returned duly served and filed.
	12	Deft's Additional Plea filed. (In addition to plea of Not Guilty as charged, a plea of Not Guilty as charged by reason of insanity)

DATE 1967		PROCEEDINGS
Jan.	17	One Govt. Witness Subpoena returned duly served and filed.
		Case proceeds to trial. Asst. U.S. Atty., W. J. Gearon for Govt.
		Charles J. Rogers, Esq. and John A. Notte, III, Esq. for Deft.
		(At the bench—Mr. Rogers in re submission of Deft. to report for induction. Mr. Notte confirms above statement to the Court. Mr. Gearon reads some medical findings into the record. Court directs parties to proceed with the trial.)
		Jury impanelled.
		Mr. Gearon in opening statement to the jury.
		(At the bench—Discussion re jurors talking about the case)
		1 Govt. Witness sworn. 1 Govt. Exhibit introduced.
	18	Trial continues. 2 Govt. Witnesses sworn. 8 Govt. Exhibits introduced.
		Govt. Rests.
		(In absence of jury—Mr. Rogers Moves For Judgment of Acquittal. Mr. Gearon in response. Motion denied.)
	19	Trial continues.
		Mr. Rogers outlines Deft's case to the jury.
		2 Deft's Witnesses sworn.
	20	3 Govt. Witness Subpoenas returned duly served and filed.
		Trial continues. 1 Deft's Witness sworn.
		Deft. Rests.
		1 Govt. Witness sworn.
		(At the bench—Govt. Rests.)
		Both Sides Rest.

DATE 1967	PROCEEDINGS
Jan. 23	Trial continues.
	(In absence of jury—Mr. Rogers presents Motion For Entry of Acquittal. (Motion filed in open Court) Court reserves decision and will submit case to jury)
	Mr. Rogers in summation of Deft's case to the jury.
	Mr. Gearon in summation of the Govt's case.
	Court charges the jury on the law and its duties.
	Jury retires to deliberate.
	Jury returns Verdict of GUILTY.
	Mr. Gearon requests case be continued to February 3, 1967.
	Same bail. Court so orders.
	Court denies Deft's Motion For Judgment of Acquittal.
	Deft's Request For Instruction received from Court and filed.
	Deft's Motion For New Trial filed.
30	Deft's Motion For Psychiatric Evaluation filed.
Feb. 6	Case called for hearing. Charles J. Rogers, Esq. for Deft. argues Motion For New Trial.
	Asst. U.S. Atty., W. J. Gearon for Govt.
	Matter continued to February 20, 1967.
20	Case called for hearing. Charles J. Rogers, Esq. for Deft. argues Motion For New Trial.
	Asst. U.S. Atty., W. J. Gearon argues in opposition and objection.
	Motion denied.

DATE 1967	PROCEEDINGS
Feb. 21	ORDER entered and filed denying Deft's motion for a new trial.
Mar. 17	Case called for hearing. Asst. U.S. Atty., W. J. Gearon for Govt. Charles J. Rogers, Esq. for Deft.
	Sentence of Court that Deft. be imprisoned for a term of two years.
	JUDGMENT AND COMMITMENT entered and filed.
	(Two certified copies retained pending appeal)
	Court orders execution stayed pending appeal. Bail is fixed $1000.00 per. recog.
	Appearance Bond filed.
	NOTICE OF APPEAL filed by Deft. (Copy of said Notice of Appeal mailed to Frederick W. Faerber, Jr., U.S. Atty.)
22	Deft's Motion For Leave to Appeal In Forma Pauperis filed.
	Affidavit of Philip Jerome Stiles filed.
	Affidavit of Philip Jerome Stiles filed.
	ORDER entered and filed granting Deft's motion for leave to file appeal in forma pauperis, etc.
April 20	Reporter's Transcript of Testimony on January 17, 18, 19 and 20, 1967 filed.
	Reporter's Transcript of Sentencing on March 17, 1967 filed.
21	Record on appeal together with certified copy of docket entries mailed to Clerk, U.S. Court of Appeals for the First Circuit, Boston, Mass.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Indictment No. 7295

Vio. 50 App. U.S.C., Sec. 462

UNITED STATES OF AMERICA

—*vs*—

PHILLIP JEROME STILES

INDICTMENT—Filed September 16, 1966

The Grand Jury charges:

That on or about the 9th day of February, 1966, at Providence, in the District of Rhode Island, PHILLIP JEROME STILES, being a person over the age of 18 years and under the age of 26 years, and a person subject to, and registered under the Universal Military Training and Service Act, did wilfully and knowingly fail, neglect and refuse to perform a duty required of him under and in execution of said Act and the rules, regulations and directions duly made pursuant thereto, in that he did fail, neglect and refuse to comply with an order of his local Selective Service System Board to submit to induction into the Armed Forces of the United States; in violation of 50 App., United States Code, Section 462.

A TRUE BILL:

/s/ Preston D. Yerrington
Foreman

/s/ Frederick W. Faerber, Jr.
United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Indictment 7295

UNITED STATES OF AMERICA

vs.

PHILLIP JEROME STILES

DEFENDANT'S MOTION FOR EXAMINATION AS TO SUITABILITY FOR SERVICE—Filed October 31, 1966

Now comes defendant, through counsel, and most respectfully represents to this Honorable Court as follows:

1. That pursuant to Indictment 7295, he is charged with failing to report for induction into the Armed Forces of the United States.

2. That a plea of not guilty has been entered and that the matter is in order for trial.

3. That subsequent to indictment, request has been made upon United States authorities to examine defendant as to suitability for service. That requests have not resulted in examination. That defendant has medical data which is pertinent to the matter and important to examining physicians, if an examination is granted, which defendant is willing to give to Selective Service Officials.

4. That examination may reveal defendant unfit for military service. That the offense defendant is charged with is a felony and punishable as a felony. That refusal to examine defendant is in violation of his constitutional rights.

WHEREFORE, your defendant most respectfully moves this Honorable Court:

1. To order Armed Forces Examining and Entrance Station to examine defendant to determine suitability for service.

2. Order this cause removed from Jury Trial Calendar until said examination has been completed.

PHILLIP JEROME STILES

By his attorney,

/s/ Charles J. Rogers, Jr.

TO: United States District Attorney for
the District Court of Rhode Island
Federal Court Building
Providence, Rhode Island

Please take notice that the above motion will be called for hearing before a Justice of this Honorable Court on the 7th day of November, A.D. 1966, and shall be deemed granted if not objected to as by rule of Court required.

/s/ Charles J. Rogers, Jr.
CHARLES J. ROGERS, JR.

[Certification of service (omitted in printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Indictment No. 7295

UNITED STATES OF AMERICA

—*vs*—

PHILLIP JEROME STILES

ORDER—December 1, 1966

This matter came on for hearing on November 21, 1966, on defendant's Motion to order the Armed Forces Examining and Entrance Station to examine defendant to determine suitability for service and to order this cause removed from the jury trial calendar until said examination is completed and, after hearing thereon, and consideration thereof, it is hereby

ORDERED, ADJUDGED and DECREED

That the said Motion be, and the same is hereby, denied and dismissed.

By Order,

/s/ Neale D. Murphy
Clerk

ENTER:

/s/ Edward W. Day
Chief Judge
United States District Court
December 1, 1966

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Indictment No. 7295

UNITED STATES OF AMERICA

vs.

PHILLIP JEROME STILES

DEFENDANT'S ADDITIONAL PLEA—Filed January 12, 1967

Now comes the defendant, through counsel, and files in addition to a Plea of Not Guilty as charged, a Plea of Not Guilty as Charged by Reason of Insanity.

PHILLIP JEROME STILES
By his attorney,

/s/ Charles J. Rogers, Jr.
1612 Industrial Bank
Building
Providence 3, Rhode Island

[Certification of service (omitted in printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Ind. No. 7295

UNITED STATES OF AMERICA

vs.

PHILIP JEROME STILES

MOTION FOR ENTRY OF ACQUITTAL—
Filed January 23, 1967

Now comes defendant in the above-entitled matter through counsel, reserving his right to have his guilt or innocence determined by a jury of his peers respectfully represents to this Honorable Court that there is sufficient reason in existence that this Honorable Court should entertain defendant's motion for acquittal, and hereby moves that this Honorable Court entertain defendant's motion for acquittal. Defendant respectfully represents to this Honorable Court that the prosecution has not, in fact, pleaded and proved every single allegation contained in Indictment 7295 brought against defendant, as is their burden. Defendant respectfully represents to this Honorable Court that in that once the prosecution and defense have both in fact rested that the burden is on the prosecution to plead and prove every single allegation of the indictment brought against defendant beyond a reasonable doubt. Defendant respectfully submits as follows:

That the indictment charges in its terms ". . . (defendant) did wilfully and knowingly fail, neglect and refuse to perform a duty required of him under and in execution of said act and rules, regulations and directions duly made pursuant thereto, in that he did fail, neglect and refuse to comply with an order of his local selective service system board to submit to induction in the Armed Forces of the United States, in violation of 50 App., United States Code Section 462." Word defendant inserted.

The defendant, through counsel, respectfully represents to this Honorable Court, that the prosecution has not proven a wilfull and knowing failure on the part of the defendant to fail, neglect and refuse to comply with an order, beyond a reasonable doubt. The best evidence in the record of the above matter would in fact substantiate the position of the defendant. The evidence on the record of the above-entitled case shows clearly that while a witness for the prosecution namely, Mrs. Thelma J. Taylor, alleges to have mailed an induction notice to defendant at 10 Fortin Road, in Kingston, Rhode Island, on a certain date, there is absolutely no evidence whatever to the effect that the defendant did in fact receive and acknowledge receipt of said induction notice. Defendant submits that quite to the contrary the evidence clearly indicates that a person other than defendant acknowledged receipt of said induction notice, said person other than defendant, being Grace Ellen Stiles. The record of testimony will also clearly indicate that the witness, Mrs. Thelma J. Taylor, was in fact in receipt of communication from defendant prior to allegedly directing an induction notice to defendant, that did cause or should have caused doubt in the mind of the sender of any communication as to whether or not the communication would in fact be received at the address used. The record clearly indicates that a prior registered communication had in fact been accepted by defendant himself personally and that he had in fact signed a receipt for the same. Said communication being something other than an induction notice. The evidence also clearly indicates that the witness, Thelma J. Taylor, had in fact requested that Post Office authorities reveal the exact place of delivery of said letter. The receipt which is in fact in evidence before this Honorable Court clearly and indicates an address other than the address to which witness alleges she mailed an induction notice. This in and of itself clearly indicates that the government knew or should have known that the communication would not in fact be received by defendant. Additionally, the record of this case clearly indicates that the defendant was outside the continental limits of the United States, not only at the time of receipt of said in-

duction notice by a person other than himself, but prior also the alleged mailing, and did not in fact return to the continental limits of the United States until a time subsequent to the date for the reporting of induction. The record of this case is replete with testimony in this area. Accordingly, a reasonable doubt is in fact created as to the actual receipt of the induction notice by the said defendant. Additionally, a reasonable doubt is raised in addition to the failure to receive as to a wilfull and knowing failure, neglect or a refusal to perform a duty. Defendant respectfully submits that nowhere in American Jurisprudence is it possible to wilfully and knowingly neglect, fail or refuse to perform a duty which defendant was not in fact aware of at any time prior to his being required to perform said duty.

Defendant respectfully submits that the record of the instant case is replete with testimony by witnesses produced both by the defense and the prosecution as to the emotional stability of defendant. Defendant respectfully represents to this Honorable Court that the prosecution has failed to prove beyond a reasonable doubt wilfull and knowing failure, neglect or refusal to perform an act required of him or a duty required of him beyond a reasonable doubt. Testimony of Alfred L. Quartaroli, M.D., Morton Silverman, Ph.D., and Grace Ellen Stiles, Ph.D., were in fact introduced, and stand not only uncontradicted, but in fact corroborated by testimony of witnesses produced by the prosecution, Joseph P. Finnegan, a special agent of the Federal Bureau of Investigation, and Lieut. Commander Edward A. Vadeika, M.D., Medical Corps of the United States Navy, that the defendant had emotional problems of long standing. Defendant respectfully submits that while this in and of itself may or may not qualify as a defense of not guilty by reason of insanity under the operable rules of the United States court at this time, there is sufficient doubt created as to the defendant's ability to wilfully and knowingly fail, neglect and refuse to perform a duty required of him. The best evidence indicates that the defendant was in fact possessed of emotional difficulties in chronic form over a long and sustained period of time, consequently, question in fact is raised as to wilfull and knowing failure, to

neglect or refuse to perform a duty on the part of this particular defendant. The defendant submits through counsel that the burden of pleading and proving each and every single allegation contained in an indictment is on the prosecution, and that at least two counts the wilfull and knowing failure is in fact open to serious question, and was, therefore, not pleaded and proved beyond a reasonable doubt.

Defendant also represents to this Honorable Court that the prosecution, at the termination of its case and the case presented by the defendant, is required to plead and prove each and every allegation contained in its indictment beyond a reasonable doubt. The prosecution has in fact failed to plead and prove by evidence of independent legal significance, that the person referred to as the defendant was in fact over the age of eighteen (18) years and under the age of twenty-six (26) years. The prosecution has the burden of proving each and every allegation of its complaint, and that the failure to plead and prove the age of the defendant by legally independent evidence other than the evidence submitted as Government's Exhibit No. 1, namely, the questionnaire of the defendant, amounts to failure. It is the contention of the defendant that the issue of age was never in fact raised at the trial by the prosecution, and that they have failed in their burden of proving the same. In addition, defendant respectfully represents to this Honorable Court that it is the burden of the prosecution to establish by evidence of legally sufficient independence that defendant was in fact a person subject to, and registered under the Universal Military Training Act, so called, and that they did not prove beyond a reasonable doubt that he was in fact a person subject to and registered under the Universal Military Training and Service Act, so called, by evidence of legally independent significance.

Additionally, defendant represents to this Honorable Court, that the indictment charges that on or about the 9th day of February, 1966, at Providence, in the District of Rhode Island, that the defendant did not in fact appear for induction. Defendant respectfully represents to this Honorable Court that the Induction notice so called entered into evidence, requires that he report at a place

other than Providence, more specifically at Westerly, Rhode Island. While admitting the highly technical nature of the objection and the contention, defendant respectfully represents to this Honorable Court that the prosecution has in fact provided a fatal variance between an element of the indictment and the proof of the same.

Defendant further submits to this Honorable Court that while defendant is aware that an order of a selective service board cannot be in fact collaterally attacked, that the induction order itself is in fact defective. Defendant respectfully represents to this Honorable Court that absolutely no evidence is on the record of the instant case to show beyond a reasonable doubt that the person signing said induction notice, more specifically, Mrs. Thelma J. Taylor, had in fact the authority to sign said order. Defendant respectfully submits to this Honorable Court that the question of whether or not the order itself was a valid order is not a collateral attack. Defendant respectfully submits that the question of whether or not the order in and of itself was valid on its face is a proper attack. Defendant respectfully submits to this Honorable Court that the prosecution has the burden of pleading and proving beyond a reasonable doubt that the very order that the defendant stands charged or violating, is in fact in and of itself a valid order. In that the prosecution did not produce one strand of legally sufficient evidence in this connection, it is respectfully submitted that at this stage of the proceedings the validity of this order has not in fact been established beyond a reasonable doubt.

Your defendant respectfully represents to this Honorable Court that he had in fact, through counsel, filed a plea in addition to the plea of not guilty said plea being a plea of not guilty by reason of insanity. Your defendant submits that he has in fact complied with the burden given to him under the American Law, that furnishing the court with sufficient evidence of a mental defect or deficiency, that when examined under any rule commonly applicable in the field of mental impairment with reference to criminal responsibility, would in fact and in law, amount to a substantial showing of mental incapacity. Defendant through counsel, further submits that in this

instance that the burden pursuant to the American Theory of Jurisprudence shifts to the prosecution to plead and prove beyond a reasonable doubt a lack of mental impairment in the area of criminal responsibility. Your defendant respectfully submits that the prosecution has in fact failed to prove, as is its burden, beyond a reasonable doubt, the lack of mental impairment with reference to criminal responsibility of this defendant. The defense submits to this Honorable Court that the transcript is replete with testimony in this area, and respectfully submits that all of the evidence adduced by the defendant has not in fact been rebutted beyond a reasonable doubt, but rather instead that a reasonable doubt does in fact exist at this time, in this area. Your defendant submits respectfully to this Honorable Court that the rebuttal witness produced by the prosecution, namely, Lieut. Commander Edward A. Vadeika, M.D., Medical Corps, United States Navy, did not, and the defense respectfully submits could not, negate beyond a reasonable doubt, the existence or nonexistence of mental impairment with reference to criminal responsibility, as to this defendant. The defense respectfully submits that in explanation of its words could not negate the existence or non-existence of mental impairment with reference to criminal responsibility of this defendant by the prosecution's rebuttal witness, that the transcript and the record and the evidence will in fact reveal that the rebuttal witness was privileged only a cursory examination, and did not in fact have sufficient facts with reference to this defendant to arrive at a proper medically and legally sufficient diagnosis. The transcript is replete with testimony that the defendant did in fact use various drugs described as marijuana, emphetamines, and a hallucinatory producing drug commonly referred to as LSD. The transcript is also replete with uncontradicted evidence that defendant considered self-destruction, that defendant engaged in homo-sexual activities, that defendant also suffered from chronic depression, anxiety, and fear, none of these having being considered by rebuttal witness in rebuttal witness's examination of defendant.

Defendant further respectfully represents to this Honorable Court that the indictment brought against defendant

does in its very terms allege, "that on or about the 9th day of February, 1966, at Providence, in the District of Rhode Island, . . .". While conceding the extreme technical basis for raising the point, defendant submits that at no time in the trial of this case did the prosecution prove the allegation that Providence is in fact in the district of Rhode Island. Your defendant respectfully submits that while it is in fact possible that this Court may in fact take judicial notice that Providence is in fact located in the District of Rhode Island, a Court it is respectfully submitted, can not in and of its own motion take judicial notice of something it has not in fact been required or even asked by the prosecution to take judicial notice of.

It is respectfully submitted to this Court that with reference to the Rule of insanity or mental impairment with reference to criminal responsibility that this Court has latitude in adopting which rule or rules or combination of rules it will in fact apply to the issue, and that this Court should in fact give consideration to the entire area. In support of this contention your defendant, through counsel, cites the case of *United States of America*, appellee vs. *Charles Freeman*, appellant, No. 182, Docket No. 29688, argued before the *United States* Court of Appeals for the Second Circuit on December 15, 1965, and decided by that Honorable Court, February 28, 1966, and cited as 357 Federal Reporter 2d, Series, p. 606, before Waterman Kufman and Hayes Circuit Judges, excerpts of which your defendant respectfully will quote verbatim for this Court.

Beginning on page 613 of the above-cited case, the language reads, "It need scarcely be observed that the sufficiency of the M. Naughten Rules at a test of criminal responsibility would not be open question to us if the Supreme Court had definitively spoken on the issue. Bound by Supreme Court precedence we would, of course, be compelled to follow any decision of that body which adopted M. Naughten as an exclusive criterion in Federal prosecutions, regardless of our dissatisfactions with such a test. As a distinguished attorney and former secretary of state has recently and perceptibly observed

in another context, federal judges are hardly empowered to satisfy a mere "desire for change in the law in accordance with the deciders own conception of right. (They) may conscientiously be seeking to administer justice, but is is personal justice . . . the justice of Louis IX or Harun al Rashid, not that described on the lintel of the Supreme Court building, "Equal Justice Under Law".

Despite the government's arguments to the contrary, we do not believe that the Supreme Court has placed its stamp of approval on M. Naughton and we find the cases cited for this proposition to be readily and clearly distinguishable. Thus, *Davis* v. *United States* (1), 160 U.S. 469, 16 S.Ct. 353, 4 L.Ed. 499 (1895) and *Davis* v. *United States*, (2) 165 U.S. 373, 17 S.Ct. 360, 41 L.Ed. 750 (1897) do not represent a square holding as to the sufficiency of M. Naughten. The former was concerned with the issue of burden of proof . . . rather than in the applicable standard . . . while the latter primarily involved the claim that the trial court charge was so narrow as not even to give the defendant full benefit of M. Naughten. Neither case in short, raised the question whether M. Naughten should be replaced or supplemented by alternate cases. In addition, at page 614, or the above-cited case, the court said, "Our conclusion that the Supreme Court has not definitively spoken on the issue is in accord with that of a substantial number of courts of appeal which have considered the question. Although the Court of Appeals for the Ninth Circuit found that only the Supreme Court or Congress could modify M. Naughten, *Sauler* v. *United States*, 241 F2d 640 (9th Circuit) Cert. Denied 354 U.S. 940, 77 S. Ct. 1405, the District of Columbia, the Third and Tenth Circuits adopted a contrary position. After an exhaustive analysis of the decisions in this area, Chief Judge Biggs, who has for many years advocated change and has offered exceptionally scholarly works on the subject, including his trail blazing dissent in *United States Ex Rel Smith* v. *Baldy*, 192 F2d 540 (3rd Circuit) 1951 concluded that the Third Circuit need not feel "constrained to adhere to and uphold the M. Naughten Rules. *United States* v. *Currens*, 290 F2d 751, 771 (1961) Chief Judge Murrah who has been an appellate judge for over quarter of a century and who has been

in the forefront of judicial and administrative reforms, speaking for the Tenth Circuit, observed that since criminal responsibility was a rule of decision of the federal courts based upon common law concepts, it was always appropriate to "re-examine and reappraise" it. *Wyon* vs. *United States*, 325 F2d 420, 425 (1963) Cert. Denied 377 U.S. 946, 84 S. Ct. 1354 12 L.Ed. 1309 (1964). It seems also significant that in a face of proliferation of cases in the area of criminal responsibility, the Supreme Court has consistently refrained from granting certiorari to consider this issue, despite inconsistent results among state courts and federal circuits. At least one writer has suggested that the Supreme Court's inaction in this area is not mere coincidence, but is motivated by a desire to encourage the circuits to discuss and develop alternative tests before making a definitive ruling. After a considerable reflection on the issue presented, we therefore conclude that we can not escape our duty to consider whether M'Naughten rule or M'Naughten's rules augmented by the "irresistible impulse" test should continue to remain the test of criminal responsibility in this federal jurisdiction." It is respectfully submitted that therefore, this Honorable Court has ample authority to consider the application of other tests and is not in fact bound by any rule, in that the United States Supreme Court has not in fact spoken in this area. This Honorable Court is a trial court, and a justice of this Honorable Court has the benefit of not only receipt of testimony, but of closely observing the witnesses. It is therefore, respectfully urged that this Honorable Court may in fact exercise its discretion in this particular case to establish nothing more than the law of this particular case with reference to criminal responsibility and mental impairment.

WHEREFORE, your defendant respectfully prays that this court grant his motion to acquittal.

PHILIP JEROME STILES
By his Attorneys,

/s/ Charles J. Rogers, Jr.
/s/ John A. Notte, III

[Certification of service (omitted in printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Ind. No. 7295

Filed, Clerk's Office, U. S. District Court, District of Rhode Island, April 20, 1967, Neale D. Murphy, Clerk.

UNITED STATES OF AMERICA

v.

PHILLIP JEROME STILES

TRANSCRIPT OF TRIAL—January 17-20, 1967.

Before his Honor, Judge Day and a jury

APPEARANCES:

For the Government:

William J. Gearon,
Assistant United States Attorney

For the Defendant:

Charles J. Rogers, Jr., Esq.
John A. Notte, III, Esq.

[2]

FIRST DAY
TUESDAY, JANUARY 17, 1967
2:00 P.M.

Mr. ROGERS. If it please the Court,—

The COURT. Do you wish this to be given to the reporter?

Mr. GEARON. Yes, your Honor, I would like to have it taken down.

The COURT. Suppose you come up to the bench then.

(Bench conference as follows:

Mr. ROGERS. If it please the Court, after pretrial conference, after reporting to the courthouse and being advised—

The COURT. Please speak out of the hearing of the spectators.

Mr. ROGERS. After being advised to report here for trial at 2 o'clock here this afternoon, myself and John Notte, Esq. had a conference with the United States District Attorney for this District, Mr. Frederick Faerber, Esq., who advised me—and I represent to this Court—in the event that my client, who stands indicted for failure to report for induction were in fact to submit to induction into the military forces of this country, and were [3] found by the Selective Service Authority to in fact be unacceptable, that the United States Attorney's office would in fact move in open court to dismiss the indictment against the defendant.

I make those representations to this Court as my best recollection of the conference with Mr. Faerber, and I ask Mr. Notte to state for the record whether or not this is a fair and accurate representation of the conversation we had.

Mr. NOTTE. This is a fair and accurate representation, your Honor.

Mr. GEARON. Your Honor, the position of the United States Attorney is essentially what Mr. Rogers said. However, it is felt, for the purposes of this record, that the reason for so doing is that the Selective Service takes the position that if a person would report for induction, it is better to have them so report than to be incarcerated in jail in the event of a conviction upon this type of case.

However, because of this case and the situations and the examinations made by psychiatrists, I feel it should be placed in the record one of the considerations for the Government taking this position is that although the man [4] is charged with failure to report for induction—which does not mean necessarily he will become a member of the Armed Forces—it is directing him, as a citizen of the United States within military age, to submit to an induction and physical examination to determine his eligibility for the Armed Forces. That is what this indictment charges him with: failure to report for induction.

The COURT. I thought it charged him with failure to report for examination.

Mr. GEARON. No, failure to report for induction, submit to the induction in the Armed Forces. But because of the uniqueness of this situation and in view of the fact that there has been psychiatric examination of this defendant, and a psychiatric examination by three doctors at the Naval Base in Newport on Friday, January 13, 1967, wherein the conclusion at the end of the examination, signed by the three physicians, psychiatrists,—their comment is as follows:

> "From the above history and findings it is the opinion of this board of psychiatric examiners that this person was at the time of any alleged offenses so free from mental defect, disease or derangement as
> [5] to be able concerning any particular acts charged to distinguish right from wrong and to be able concerning any particular acts charged to adhere to the right. He possesses sufficient mental capacity to understand the nature of any proceedings against him and intelligently to conduct or cooperate in his own defense. It is also the opinion of this board that this person is unfit for military service."

And it is signed by E. A. Vadeika, Frank M. Moscarillo, A. H. Schwartz.

I have a further examination conducted by Max Faintych.

The COURT. Would you gentlemen be good enough to make clear to me what this is all about?

Mr. GEARON: This is the position: that if this man submits to induction, in all probability he will not be acceptable anyway. But in view of the fact that he is willing to go down for induction, the Government would take the position—and the United States Attorney has recommended—that there would be no further prosecution because it would really in effect—if he were a person who could be eligible for the Armed Forces, there would [6] be a point in going forward with it. But insofar as this person, while charged with failure to report for induction, which is a serious crime,—

The COURT. Are you ready to go to trial or aren't you?

Mr. GEARON. We would continue it if this man—

The COURT. I see no need of it. Let's try this case and get it behind us. That is my position. Either he is guilty or he isn't.

(Bench conference concluded)

(Jury impaneled)

Mr. GEARON. Your Honor, Chief Judge Day, Mr. Foreman, ladies and gentlemen of the jury, as I told you at the outset when you were being impaneled as jurors, this case involves a violation of the Selective Service Act, and the defendant in this action, Phillip Jerome Stiles, is charged that on or about the 9th day of February, 1966, at Providence, he failed to report for induction, as required by the Selective Service law; and that he wilfully and knowingly did so.

We will show you by the records of the Selective Service Board, Westerly, where the defendant resides or in the area where the defendant resides, that he was notified to report for induction not once, but on several occasions; [7] and that he was given a delinquency notice and then another notice to report. On January 24th a notice was mailed out for him to report on February 9, 1966 for induction, and he failed to do so. And that is the situation. That is the Government's contention.

In order for the Government to prevail—and his Honor, Judge Day, will give you the instructions on the law in this matter—we must prove this case beyond a reasonable doubt. You, Mr. Foreman, ladies and gentlemen of the jury, are the triers of the fact; and his Honor, Chief Judge Day, as I said before, will instruct you on the law.

The case is just that: that the defendant on the date I have indicated failed to report for induction, and he wilfully and knowingly did so.

The COURT. We will take a short recess at this point.

(RECESS)

Mr. ROGERS. May we approach the bench a moment, your Honor?

The COURT. Certainly.

(Bench conference as follows:

Mr. ROGERS. May it please the Court, Mr. Notte and myself and the defendant went to the men's room. There [8] was a member of the jury in the men's room, and there were two persons not members of the jury. An inflammatory remark was made about burning draft cards; "We will burn them; we will get them," et cetera. And it was heard by a member of the jury, your Honor.

Correct, John?

Mr. NOTTE. Right.

Mr. ROGERS. I recognize the juror—at least one of them—as being Leslie Clegg.

The COURT. What do you want me to do?

Mr. ROGERS. I just wanted to advise your Honor and ask your Honor to instruct the jurors.

The COURT. I always do later. I instruct them, when they depart today, they are not to discuss this case or let anyone discuss it with them.

Will that be satisfactory?

Mr. ROGERS. It would be, your Honor.

Mr. GEARON. Did I understand Mr. Rogers to say one of the jurors said that, or one of the people in the—

Mr. ROGERS. No, one of the people, not a member of the jury, made this remark.

The COURT. This was in the men's room.

Mr. GEARON. Were any of the jurors present?

[9] Mr. ROGERS. Yes.

The COURT. I will give the jury the instruction.

Mr. ROGERS. Thank you, your Honor.

(Bench conference concluded)

The COURT. Go ahead, Mr. Gearon.

THELMA CHASE TAYLOR, Sworn

Direct examination by Mr. Gearon

Q Miss Taylor, you are here as a result of a subpoena issued by the Court, requested by the United States Attorney. Is that correct?

A That is right.

Q What is your business or profession, Miss Taylor?

A I am a clerk—

The COURT. A little louder. Is it Miss or Mrs.?

The WITNESS. Mrs.

The COURT. Speak up, if you will, please.

A (Continuing) I am clerk of Local Board No. 4 in Westerly.

Q As a result of that subpoena, Mrs. Taylor, were you requested to bring certain documents with you?

A Yes.

Q Do you have those documents?

A Yes, I believe they are all here.

[10] Q Are you custodian of certain records of Local Draft Board No. 4 in Westerly?

A Yes.

Q Do you have a questionnaire, classification questionnaire, returned to you by one Phillip Jerome Stiles?

A Yes, I do.

Q And do you recognize the defendant in this case, Mrs. Taylor?

A No, I wouldn't say I would recognize him because I haven't seen him in a year.

The COURT. Because what, please?

The WITNESS. Because I haven't seen him in a long time.

The COURT. In a long time?

The WITNESS. Yes.

Q Is this a classification questionnaire?

A Yes, it is.

Q Does it bear the signature of one Phillip Jerome Stiles?

A Yes, it does.

Mr. GEARON. I would like to introduce this as Government's No. 1, your Honor please.

Mr. ROGERS. May I have a moment to examine it?

The COURT. Certainly.

(A pause)

[11] Mr. ROGERS. Thank you, your Honor.

The COURT. Government's Exhibit 1.

(Selective Service System Classification Questionnaire, Rhode Island Local Board No. 4, dated April 18, 1963, bearing Name of Registrant: Stiles, Phillip Jerome, marked United States Exhibit No. 1)

Q Now, Mrs. Taylor, as a result of receiving this questionnaire back from the person whose name appears on there, Phillip Jerome Stiles, is that person given a classification under the Selective Service System?

A Yes.

Q What was that classification, if you can tell, please?

A 1-A.

Q On what date was that received? Rather, on what date was the classification made?

A June 6, 1963.

The COURT. '63?

The WITNESS. Yes.

Q And this classification was made by Selective Service Board, Local Board No. 4, in the Town Hall, Westerly, Rhode Island. Is that correct?

A That is correct, yes.

Q On the back of page 8 of this classification ques-[12] tionnaire there are entries made. And you are official custodian of these forms and records. Is that correct?

A That is right.

Q On this form, on page 8, there are certain entries. Could you explain that to the Court and to the jury, please?

A Well, we make entries on all information received as a matter of record.

The COURT. You mean from the registrant?

The WITNESS. From the registrant or anyone referring to the registrant that might have a bearing.

Q It is marked "June 6, 1963; Classified 1-A." Is that correct?

A That is right.

Q And on June 13 is "SSS Form 110 Mailed." What did that mean?

The COURT. June 13, 1963?

Mr. GEARON. Yes, your Honor.

Q (Continuing) What is that?

A That is the notice of classification.

Q Then there is another entry, "3-11-64 1-A." What does that mean?

A He was reclassified 1-A.

The COURT. What is that date again?

[13] Mr. GEARON. March 11, 1964.

The COURT. Reclassified 1-A again. Is that it?

The WITNESS: That is correct.

Mr. GEARON. That is correct.

Q Then there is an entry, "March 12, 1964. SSS 110 Mailed." Is that correct?

A Yes.

The COURT. For the benefit of the Court and the jury, what does "SSS 110" mean? What does that mean, Mrs. Taylor?

The WITNESS. Selective Service System No. 110, which is the form number of the notice of classification.

The COURT. To whom is that sent?

The WITNESS. To the registrant.

The COURT. And was it sent on March 12, 1964?

The WITNESS. It was.

Q There is an entry here, "September 22, 1964" with the following words: "Order Phys. Mailed." What does that mean, please?

A Physical examination.

The COURT. The date of that again, please?

Mr. GEARON. September 22, 1964, your Honor.

Q Mrs. Taylor, could you from the date, October 29, 1964 down—could you explain those entries, please, with the dates?

[14] A Well, October 29, 1964, the registrant was classified 2-S.

The COURT. Classified 2-S?

The WITNESS. That is right.

The COURT. What does that mean?

The WITNESS. It means he was a student, and it had been confirmed that he was a student.

The COURT. Student?

The WITNESS. Yes.

The COURT. Classified as a student, 2-S.

The WITNESS. 2-S.

The COURT. Does it indicate where he was a student?

The WITNESS. At the University, I believe. It would be in the records.

The COURT. Have you got it there in front of you?

The WITNESS. I don't know as I have it here. And I am very sure he was at the University of Rhode Island. I don't have it here.

On November 6th he was sent a notice of classification of his 2-S.

The COURT. November 6, 1964?

The WITNESS. That is right.

Mr. ROGERS. May it please the Court, might I have [15] that? I didn't get that.

The WITNESS. November 6, 1964 he was sent a notice of classification—of his 2-S classification.

The COURT. Student deferment. Is that it?

The WITNESS. Student deferment.

Q Now the next entry is "11-9-65," with "1-A." Could you explain that, please?

A It means he had left college.

Q And he was reclassified as 1-A?

A Or we believed he had left, according to our information. That is right.

Q On November 17, 1965 there is another entry: "SSS Form 110 Mailed."

A That again is a notice of classification—of his 1-A classification.

Q The classification which would appear as having been reclassified on November 9, 1965. Is that correct?

A That is right.

Q Would you read the next entry, please?

A November 29, 1965 there was SS Form 127 mailed, and that is a current information questionnaire.

The COURT. That, what, please?

The WITNESS. SS 127 is a current information questionnaire.

The COURT. Current information questionnaire?

The WITNESS. Yes.

Q And would you read the rest?

[16] A And an order to report for physical was also mailed then.

Q What is the notation next to it?

A "Failed to report."

Q On the words in parentheses, "Failed to report," how is the Draft Board—how would you know that he failed to report so as to make that entry?

A Because we take a roll call on all the physical examination dates.

Q And there was no Phillip Jerome Stiles that answered the roll call.

A That is right.

Q Will you read those other entries, please?

A On 12-21-65 there was another current information questionnaire mailed and another order to report for physical. On January 11, 1966 Form—SS Form 304 was mailed that he had failed to report for physical examination on the 6th of January.

Q 1966?

A That is right.

The COURT. Wait a minute. It doesn't appear, does it? On 12-21-65 you say SS Form 127, current information questionnaire, was sent.

The WITNESS. And an order to report for a physical.

[17] The COURT. And an order to report when?

The WITNESS. January 6, 1966.

The COURT. January 6, 1966 for what?

The WITNESS. Physical examination.

The COURT. Physical examination. Very well.

Now you say on January 11, 1966 SS 304 was mailed.

The WITNESS. Yes.

The COURT. What is 304?

The WITNESS. That is a delinquency notice.

Q Would you read the rest of the notation, please?

A "Failed to report for physical examination, January 6, 1966."

Q How would it be brought to the attention of the Draft Board that he failed to report for a physical examination in order to make this entry?

A Because he didn't answer the roll call.

Q Now there is another entry. Would you read that, please?

A (Continuing) Also, the Armed Forces would report him as not having reported.

Q Do you have those records with you?

A You mean the list of registrants for physicals?

Q No, I mean notations.

Do you receive any notation when a person fails to report from the Armed Forces?

[18] A From the Armed Forces? Yes, we do.

Q Do you have that notation in your records here?

A I don't have them.

Q Would you read the rest—what appears on this questionnaire?

A January 14, 1966 SS Form 223 was mailed, which is a pre-induction physical order to report on the 20th.

The COURT. January 20?

The WITNESS. To report for a physical on January 20th.

A (Continuing) Then January 20, 1966 he failed to report, and an SS Form 304 was again mailed, which is a delinquency notice that he had failed to report for physical on the 20th.

On the 24th of January we sent SS Form 252, which is an order to report for induction, and he was to report on the 9th of February 1966.

On February 9, 1966 he failed to report for induction.

Q How did you determine that, Mrs. Taylor, please?

A In the same way as the pre-induction. He did not answer.

Q The roll call?

The COURT. I didn't get that.

(Last answer, as above, read by reporter)

[19] The COURT. How did she learn that fact?

Q How did the Draft Board become aware he failed to report for induction on February 9, 1966?

A Because he did not answer the roll call at our office, and, also, the Armed Forces returned the list saying he had failed to report.

Q You say he did not answer the roll call. In other words, you take a roll call of all the persons who are to report on that particular date?

A That is correct.

Q And the person who is named Phillip Jerome Stiles, who had received a notice for induction, did not report?

A That is correct.

Q And he did not report in Providence to the Armed Forces induction.

A That is right, according to the list.

And then February 16th SS Form 301, which notifies the fact that a registrant has failed to report for induction, and that is sent to our headquarters.

Q Who sends that to you. please?

A It was not received by us. We send it to our headquarters.

Q I misunderstood you; I am sorry.

When you say you send it to your headquarters, where are your headquarters?

[20] A Providence.

Q Providence.

A Providence.

Q What other papers do you have there—or official documents?

(A pause)

Q I show you this Selective Service form, SSS Form No. 252, and can you identify it, please, along with the other documents appended thereto?

A That is the order for the registrant to report for induction February 9, 1966.

Q And is this the original document?

A No, it is not. It is a carbon copy which we keep.

Q It is a carbon copy that you keep of an original that is sent to the registrant. Is that correct?

A That is correct.

Q Do you know whether or not the registrant received that? Did you send it to his last known address?

A Yes, we did.

Q How did you secure that address, if you can recall?

A Well, it is the last one that we were given by the registrant.

Q And you would get that from the questionnaire. Is that correct?

[21] A No, we had communication since then at different addresses.

Q What was the last known address given to you by the registrant?

A 10 Fortin Road, Kington.

The COURT. 10 Fortin Road. What town is that?

The WITNESS. Kingston, Rhode Island.

Q Do you have a record from the registrant that that was his last home address?

A Yes, we do.

Q And what are the other two documents that are appended thereto?

A The report for—the Order to Report for Induction was mailed, registered, with request of the receipt returned.

Q This is —

A —sent to him with the place requested where it was picked up, and it was signed for by his mother, I assume, Grace Ellen Stiles.

The COURT. I can't hear a word you say.

The WITNESS. It was signed for by his mother, Grace Ellen Stiles.

Mr. GEARON. I would like to offer this as Government's Exhibit No. 2, with the official post office receipt and form on it.

[22] Mr. ROGERS. We would object at this time to the introduction of this document.

The COURT. I can't hear you, Mr. Rogers.

Mr. ROGERS. I say we would object at this time to the introduction of this SS Form 252 with the two alleged receipts appended thereto on the grounds we don't know whether or not this witness was the person who sent it, your Honor. And, additionally, the handwriting has not in fact been identified as being hers. For that reason we object.

The COURT. Develop that, Mr. Gearon. Was this notice sent by the witness personally?

Mr. GEARON. Your Honor, I don't think I have to go into it that far on the basis of the Code of Federal Regulations.

Q Did you send this notice, Mrs. Taylor?
A Yes, I did.
The COURT. Did you, Mrs.—
The WITNESS. Yes, I did.
The COURT. You deposited it in the mail?
The WITNESS. I took it to the post office.
The COURT. That is what I mean. You took it to the post office for mailing.
The WITNESS. Yes.
[23] The COURT. Is that the only objection you made, Mr. Rogers?
Mr. ROGERS. That was one objection, your Honor. And, additionally, your Honor, the witness testified as to whose signature was on the alleged receipt. I object on the grounds unless she can either qualify as a handwriting expert or had some prior contact with the person she does name, your Honor, I don't know how she would know this.
Mr. GEARON. Your Honor please, may it please the Court, I have before me Title 32, Code of Federal Regulations, Sec. 1641.3, entitled "Communication by mail," under the heading, "Notice," known as Part 1641.

> "Communication by mail.
>
> "It shall be the duty of each registrant to keep his local board advised at all times of the address where mail will reach him. The mailing of any order, notice, or blank form by the local board to a registrant at the address last reported by him to the local board shall constitute notice to him of the contents of the communication, whether he actually receives it or not."

[24] Mr. ROGERS. If it please the Court, I certainly have no objection to the fact that Mr. Gearon has in fact read 1641.3 of the Code of Federal Regulations. However, your Honor, this does not obviate the necessity of his establishing the fact of how this woman knows this signature to be that of the person that she names, your Honor. I don't thing that Title 1641.3 obviates this at all, your Honor, and, therefore, I persist in my objection on that ground.
The COURT. Are you familiar with the signature of the person who signed that receipt, Mrs. Taylor?

The WITNESS. No, I am not.

The COURT. Perhaps, Mr. Gearon, we will mark it for identification, subject to further—

Mr. GEARON. Your Honor, again I press for the introduction as a full exhibt.

The COURT. I know you do, but you are seeking to introduce with the exhibit a post office receipt signed by someone other than the registrant.

Mr. GEARON. I can take off—

The COURT. It is now 4:30. We will stop here until 10 o'clock tomorrow morning. You may step down, Mrs. Taylor.

Mr. Foreman, ladies and gentlemen of the jury, I don't [25] know if this is the first time you have all sat on a jury, but for the benefit of some of you, who may not have sat on a jury in this court before, I want to give you a few words of advice and caution if I may. It is simply this: Please refrain from discussing this case among yourselves until you have heard all the evidence, the arguments of counsel, and the instructions of the Court. In addition, I cannot admonish you too strongly: Do not let any person —no matter who it be—discuss this case with you or make any comments about it to you. If any attempt is made to do that, if any attempt is made to discuss it with you, I shall appreciate your advising the Court immediately. It is your duty to render an absolutely impartial verdict in this case, a verdict that will be based solely upon the evidence introduced here and in accordance with the instructions which I will give to you. I don't want anyone interfering in any manner or fashion with you in the performance of your solemn obligation as members of the jury in this case. If you will keep that admonition in mind, I am sure you will find your task much easier for you to perform.

We will stop here until 10 o'clock tomorrow morning.

(Adjourned at 4:35 p.m. until Wednesday, January 18, 1967, at 10:00 a.m.)

[26]

SECOND DAY
WEDNESDAY, JANUARY 18, 1967
10:08 A.M.

THELMA CHASE TAYLOR, Resumed

Direct examination by Mr. Gearon

Q One question, Mrs. Taylor: Between the dates of April 28, 1963 and February 16, 1963, were you the only employee—

The COURT. Now wait a minute. What was that date again?

Mr. GEARON. Dates of April 28, 1963 and February 16, 1966, your Honor.

Q (Continuing)—were you the only employee of Local Board No. 4 in Westerly?

Mr. ROGERS. Objection, your Honor. Leading.

The COURT. I don't think it suggests the answer. I will allow it.

The WITNESS. Do you want me to answer?

Mr. GEARON. Yes, please.

A Yes, I was the only clerk, full-time clerk, there.

Mr. ROGERS. Your Honor, I move to strike the answer as not being responsive to the question.

The COURT. In what regard is it not responsive?

[27] Mr. ROGERS. I believe the question was: was she the only employee. She answered she was the only full-time clerk. The answer is not responsive to the question.

The COURT. Were there other part-time clerks in the Board?

The WITNESS. When we were very busy, the headquarters would always send me help. I couldn't truthfully say I never had any help during that time.

Q When you say you were very busy, could you explain that, please?

A Well, I was the only clerk for a long time, for many years. And if we had a particular amount of work, they would send someone for a few hours a day.

Q I show you this document. I believe you previously have identified it.

A Yes, I have.

Mr. GEARON. Your Honor, yesterday objection was made to this post office receipt being appended to this order to report for induction. I think for the purposes of admissibility I would like to at the present time qualify or have Mrs. Taylor explain these two documents.

The COURT. She may. Let's see what it is you have in mind.

[28] Mr. GEARON. There was objection made to this going in as an exhibit without identification of the signature of the recipient. I don't think it is necessary for the purposes of admissibility at this time, Your Honor, because she can identify these documents. When I say, "She,"—Mrs. Taylor.

Q Now, Mrs. Taylor, did you mail the order to report for induction?

A Yes, I did.

Q Did you make this slip out?

A No.

Q Was it made out in your presence?

A Yes.

Q By whom was it made out?

A One of the clerks at the post office.

Q Did he give it a number?

A He wrote the number on there.

Q Was this receipt made out in your presence, the pink one?

A At the same time.

Q Was this receipt received by you in the regular course of the mail being sent to the Draft Board?

A Yes, it was.

Q And you can identify it as such?

A Right.

[29] Q You can identify the white piece of paper?

A Yes.

Q And the pink piece of paper?

A Right.

Q Would you read the registered number, please?

A 1811.

The COURT. I didn't hear that, please.

The WITNESS. 1811.

Q Would you read this number, please?

A 1811.

Q Both of these documents were made out in your presence?

A Right.

Q And the pink one was received by you through the mail subsequent thereto.

A Yes, it was.

Q Is this an official stamp of Local Board No. 4—

A Yes, it is.

Q (Continuing)—for receipt of mail?

A It is our date stamp.

Mr. GEARON. I would like to offer this document as Government's Exhibit No. 2 with two postal receipts attached thereto.

Mr. ROGERS. I request an opportunity to look at it again, may it please the Court.

[30] (A pause)

Mr. ROGERS. I would object to its introduction, your Honor, on the grounds initially that it is not an original. Additionally, your Honor, it is not signed by anybody. Additionally, it has matter appended to it that is not ordinarily connected with an order to report for induction.

The COURT. Meaning what?

Mr. ROGERS. Beg your pardon, your Honor?

The COURT. Meaning what?

Mr. ROGERS. Meaning these two alleged receipts are appended to it, your Honor. The primary objection would be that it bears no signature or no facsimile of any signature, your Honor. Additionally, I still feel that the witness has not qualified as being competent to recognize the signatures of the people alleged to have received this. And I would press my objection.

The COURT. I think a proper foundation has been laid. It may be marked Government's Exhibit 2. The defendant's objection to the Court's ruling is noted.

(Carbon copy of Selective Service System Order to Report for Induction, from Rhode Island Local Board No. 4, Westerly, R.I., to Phillip Jerome Stiles, dated [31] January 24, 1966, and two attached post office receipts, dated January 24 and January 25, 1966, respectively, marked United States Exhibit No. 2)

Q Can you tell the Court and members of the jury what is on that document, please? When I say, "What is on that document?" I mean the part down to here. (indicating)

A Those are my initials which I use on the carbon copy.

Q Can you read the heading of the document? Read the contents of that document down to your initials, will you, please?

A Beginning with "The President of the United States"?

Q Yes.

A "To

Phillip Jerome Stiles
10 Fortin Road
Kingston, R. I.

"January 24, 1966, Selective Service
No. 37-4-45-78.

"GREETING:

"You are hereby ordered for induction into the Armed Forces of the United States, and to report at Local Board No. 4, Town Hall, Westerly, R.I., on February 9, 1966 at 6:30 a.m. for forwarding
[32] to an Armed Forces Induction Station."

Then the signature, and on the carbon I have initialed it as clerk of the Local Board.

Q Who gets the original of that, Mrs. Taylor?

A The registrant.

Q And you sent the original to the last known address of the registrant?

A That is right.

Q As it appeared on the Selective Service questionnaire.

A That is right.

Q In response to sending that out, back came the pink appended document, which is marked—could you read it, please?

A Well, on this is was marked:

"Show to whom and when delivered."

And the registered number of 1811.

"Signature or name of addressee,
Phillip Jerome Stiles.
"Signature of addressee's agent, if any, Grace—"

Mr. GEARON. Mrs. Taylor, just don't read that part.
The WITNESS. All right; that is all
[33] Q And that bears your stamp?
A Yes, it does.
Q Directing your attention to February 9, 1966, were you present when persons, who had been notified to report for induction at the Town Hall in Westerly on that date and at the hour of that induction notice, reported?
A Yes, I was.
Q Was a roll call made, please?
A Yes, a roll call was made,
Q Did any person answer to the name of Phillip Jerome Stiles?
A No.
Q I am sorry, Mrs. Taylor. Could you look here, if you would, please? I believe it is your own document marked No. 22, and find it for me, please?
A Mr. Gearon, I have it.
Q Pardon me?
A I have it.
Q Did you send any further communications to Mr. Stiles at that address after February 9, 1966?
A I would have to look at the questionnaire before I answer.

(A pause)

A (Continuing) No.
Q Pardon me?
[34] A No.
Q No. Could you identify this for me, please?
A This is a delivery list.
The COURT. What, please?
The WITNESS: A delivery list for men going into the service.
The COURT. A delivery list of what?
The WITNESS. February 9, 1966.
Q Who prepared that list?

A I prepared it.
Q Does that name, Phillip Jerome Stiles, appear on there?
A Yes, it does.
Q Is there any notation near his name?
A "Failed to report."
Q This list is sent to whom, please?
A One is sent to my headquarters, and three are sent to the Armed Forces examining station.
Q And is this one of the three that was—
A That is correct. That is the original.
The COURT. I can't hear you.
The WITNESS. That is the original. It was sent to the Armed Forces induction center.
The COURT. Where was the Armed Forces induction center?
[35] The WITNESS. 1 Washington Avenue, Providence.
Q And was this returned to your office—this delivery list?
A Yes, it was returned to me.
Q On what date?
A February 14, 1966.

(A pause)

Mr. ROGERS. No objection, your Honor.
The COURT. It may be marked Government's Exhibit 3.

(Selective Service System Delivery List of Rhode Island Local Board No. 4, Westerly, R.I., dated February 9, 1966, marked United States Exhibit No. 3)

Q Now, Mrs. Taylor, after the date of the return of the questionnaire from the person who identified himself as Phillip Jerome Stiles, did you ever receive any other communications from or ever receive any communications through the mail signed "Phillip Jerome Stiles," or "Phil Stiles" or "Philip Stiles"?
A Yes, we have.
Q I ask you to identify this, please.
A Yes, we received this.
Q Is this your date stamp?

[36] A. Yes, it is.

Mr. GEARON. I would like to offer this as Government's Exhibit No. 4.

(A pause)

Mr. ROGERS. Might I have the question read back so I would know what date Mr. Gearon is talking about? I believe he said "subsequent to". and I didn't hear him. I am sorry.

(Previous question read by reporter as follows:

"Now, Mrs. Taylor, after the date of the return of the questionnaire from the person who identified himself as Phillip Jerome Stiles, did you ever receive any other communications from or ever receive any communications through the mail signed 'Phillip Jerome Stiles,' or 'Phil Stiles' or 'Philip Stiles'?")

Mr. ROGERS. Objection. I don't know what questionnaire Mr. Gearon is talking about.

Mr. GEARON. Government's Exhibit No. 1, your Honor.

Mr. ROGERS. If that is Government's Exhibit No. 1, no objection.

[37] The COURT. What is the date of that questionnaire, Mr. Gearon?

Mr. GEARON. The questionnaire is April—the return date for the questionnaire is April 28, 1963.

The COURT. 1963?

Mr. GEARON. Yes.

The COURT. The communication you are holding may be marked Government's Exhibit 4.

(Letter dated May 17, 1963, to Selective Service Registration Board, Westerly, Rhode Island, from Phillip Stiles marked United States Exhibit No. 4)

Q Would you read that, please, to the Court and to the jury?

The COURT. As loud as you can, Mrs. Taylor.

The WITNESS. All right.

A "Phillip Jerome Stiles
10 Fortin Road
Kingston, R. I.

May 17, 1963

"Selective Service System Registration Board
Town Hall
Westerly, Rhode Island

"Dear Sirs,

"This is to inform you of two events:

[38] "1. As of next week my address for the summer months (until approximately September 1) will be,
"103 Gorgas Lane
Oak Ridge, Tennessee.

"2. I have lost my original registration certificate and wish to apply for a duplicate. It should be mailed to the new address.

"I hope that this is adequate notice. Any further correspondence should be directed to my new address.

Thank you.

"Yours truly,
"Phillip Stiles."

The COURT. What is the date of that communication?

Mr. GEARON. Yes.

Q If you would, please?

A It was written on May 17, 1963 and received by us May 20, 1963.

Q I show you this. Can you identify it, please?

A Yes, I can.

Q And what is it?

A Well, this is a notice of classification sent to Phillip J. Stiles, and this paper is a Statement of Selective Service Disaffiliation.

[39] Q Did you receive both of those in the same manner?

A Clipped together.

Q Both sheets were clipped together, and you can personally identify it as having received it.
A Yes, I can.
Q Is there a date stamp on the back of that?
A Yes, there is.
Q What is the date?
A November 27, 1963.
Mr. GEARON. I would like to offer this as Government's No. 5, your Honor.

(A pause)

Mr. ROGERS. Objection, your Honor, as to the Statement of Selective Service Disaffiliation on the grounds that the witness is not qualified as either a handwriting expert or to such a degree that she is totally familiar with the signature that purports to be that of Phillip J. Stiles, your Honor.
Mr. GEARON. Your Honor, I don't think the admissibility of this thing can be objected to. The signature would go to the weight, whatever weight, the jury would give that. She stated she received this from—rather, with the name, Phillip J. Stiles, on there; and there was a Phillip J. Stiles registered with the Local Draft Board, 40] along with the classification card she certainly can identify.
The COURT. Do I understand, Mrs. Taylor, that the Selective Service notice of classification card bears your signature as clerk of the Local Board? Is that your signature appearing thereon?
Suppose you show it to the witness.
Q Is this your signature, Mrs. Taylor?
A Yes, it is.
Q What is that card?
A That is a notice of classification card.
The COURT. And that was sent by the Local Board to whom?
The WITNESS. Phillip J. Stiles.
The COURT. Did you, as clerk of the Board, send it out?
The WITNESS. Yes, I did.

The COURT. And your testimony is that sometime after it was sent out, to wit, in November 1963, that card was returned through the mail to your Board?

The WITNESS. That is right.

The COURT. And it is your further testimony that with it, annexed to it, was the Statement of Selective Service Disaffiliation?

[41] The WITNESS. That is correct.

The COURT. These records have been kept by the Board in the regular course of its business since their receipt?

The WITNESS. Right, until they were sent to my headquarters.

Mr. GEARON. Providence.

The COURT. And then returned to you.

Mr. GEARON. Returned to her.

The COURT. I think under the circumsances a proper foundation has been laid. It may be marked Government's Exhibit 5. The defendant's objection to the Court's ruling is noted.

(Statement of Selective Service Disaffiliation, dated November 26th, and date stamped November 27, 1963, to: Selective Service System, Local Board # 4, signed by Phillip J. Stiles, and attached Selective Service System Notice of Classification Card, in the name of Phillip J. Stiles, dated June 13, 1963, marked United States Exhibit No. 5)

Q Mrs. Taylor, I show you this document. Can you identify it, please, along with the envelope appended thereto?

[42] A Yes, I can.

Q Does this have a date stamp on it when it was received?

A Yes, it does.

Q What is that date, please?

A January 18, 1966.

Q Is this document dated in any place—the letter, please?

A I see no date on it.

Q Was this letter received in this envelope?

A That is right.
Q And was it opened by you?
A Yes.
Q This is kept in a file pertaining to one Phillip J. Stiles?
A That is right.
Q You can identify this as having received it in the regular course of business at the Local Board No. 4?
A Right.
Q It bears Local Board No. 4's stamp?
A Yes.
Q And you have kept this in the file for the person who registered with the Local Board No. 4 and was known under the name, Phillip J. Stiles. Is that correct?
A Correct.
Mr. ROGERS. I object to my brother's method of interrogation; extremely leading.
[43] The COURT. Try not to lead, Mr. Gearon. It is unnecessary.
Q Is this letter kept in a file pertaining to a person known as Phillip J. Stiles, a registrant with Local Board No. 4?
A It is.
Mr. ROGERS. Objection. Motion to strike the answer. Again it is a leading question.
The COURT. I think it would be preferable if you were to ask the witness in whose file this particular letter was kept. I will allow it to stand. Try not to lead.
Mr. GEARON. I would like to offer this as Government's Exhibit No. 6, your Honor.

(A pause)

Mr. ROGERS. Objection, your Honor. There are all manner of marks on this paper that may or may not have been put on there by the author. In addition, your Honor, this does not indicate anything with the defendant, Phillip J. Stiles, your Honor—Phillip Jerome Stiles. It is allegedly signed by somebody.
The COURT. Not having seen the document, I can't appreciate the weight of those objections, Mr. Gearon.
Mr. GEARON. Do you wish to see it, your Honor?
[44] I was going to further ask Mrs. Taylor—

The COURT. There is objection made. I would like to be in a position to rule on that.

(A pause)

The COURT. If you feel you want to ask further questions, you may.

Q Now the numerals, "18," does that have any significance?

A We have a list of documents. This number 18 signifies that this is number 18 on the list.

Q Where is that list?

A I believe Colonel Wilson has the list.

Q And you make a list of the documents. Do you retain all documents in a file?

A I do not make this list. This is merely put on here as a guidance.

Q I show you this folder. Can you identify it?

A This? (indicating)

Q Yes.

A This is the folder—

Q Pardon me?

A This is the folder of Phillip Jerome Stiles in Local Board 4.

Q You maintain a record of every document that is [45] either sent or received in that file to Phillip Jerome Stiles—to a registrant known as Phillip Jerome Stiles? Do you keep a record? Do you keep in that file—

A We do.

Q (Continuing)—a record of every document that is either sent to you pertaining to Phillip Jerome Stiles or is sent out by you pertaining to Phillip Jerome Stiles? Is that correct?

Mr. ROGERS. Objection. The form of the question again is leading.

The COURT. Objection sustained.

Q Do you maintain a file under the name of Phillip Jerome Stiles that has all the documents that you received pertaining to that file?

Mr. ROGERS. Again, your Honor, leading. Objection.

The COURT. I will allow that.

A Yes, we do.

Q Who put the number, "18," on there, if you can tell us? Did you put it on?

A I really couldn't say. I believe it was put on at headquarters.

Q You didn't put it on.

A I did not put it on.

Q There are some pencil marks. Who put those on there?

[46] A I put them on, and it is his Selective Service number which corresponds with his folder.

Mr. ROGERS. Objection. Motion to strike the latter part of the answer as not being responsive.

The COURT. I think it explains the answer. I will allow it to stand.

Mr. GEARON. I would like to offer this as Government's Exhibit No. 6, your Honor.

Mr. ROGERS. Renew the objection, your Honor.

The COURT. It appears from the Court's examination of the document that printed in the upper righthand corner are the words, "Phil Stiles," with the address, "10 Fortin Road, Kingston, R.I." And it purports to be signed by Phil Stiles.

Under the Circumstances I think the objection goes to the weight and not the admissibility. It may be marked Government's Exhibit 6.

Mr. ROGERS. Defendant's objection noted, your Honor?

The COURT. Certainly.

(Letter date stamped January 18, 1966, signed "Phil Stiles" and accompanying envelope addressed to Rhode Island Local Board No. 4, Westerly, R.I., [47] marked United States Exhibit No. 6)

Q Would you read this, please, Mrs. Taylor?

A

"Phil Stiles
10 Fortin Road
Kingston, R. I.

"Dear Sirs,

"Your threatening letters continually arrive, telling me exactly what to do and informing me of the penalties for not complying with your directives.

"In response, I can only repeat my previous assertions that I am unwilling to be a part of the organized murder and threat of murder which is the basis of any army.

"There are better forms of communication than impersonal printed forms filled with orders and threats. If man is to function socially as something more than a self-destructive machine, the improvement of communication is of great importance. If you wish to discuss these matters further perhaps we could arrange a mutually convenient time and place.

I hope that you folks can rise above crude attempts [48] at manipulation and engage in some constructive interaction.

"love,

"Phil Stiles.

"PS I am soon going to take a vacation trip of a month or two. I tell you this because my leaving town with no definite forwarding address might otherwise seem evasive. Don't worry, I'll send you post cards letting you know how I'm getting along."

Mr. ROGERS. Your Honor, I move to strike the entire answer. I believe the question was to read everything on that, and I believe an examination of the document would reveal she did not in fact read everything that was on there.

The COURT. If there is something further to be read, let's have it read. What wasn't read?

The WITNESS. The only thing I did not read is Selective No. "37-4-45-78," which I myself put on, identifying it as belonging to Phil Stiles' folder.

The COURT. Did you also stamp a date on the back of it?

THE WITNESS. Yes.

Q Would you read that date and the date of the envelope, please?

[49] A January 18, 1966; and on the envelope, January 17, 1966.

Q I show you this document. Can you identify it, please?

A Yes, I can.

Q Did you receive it in the regular course of the mails?

A Yes, I did.

Q Is it kept as a regular part of the records of Selective Service Local Board No. 4 in Westerly, Rhode Island?

A It is.

Q Whose file is it kept in?

A Phillip Stiles'.

Q Is there a date stamp on there of the Local Board?

A Yes, there is.

Q What is the date, please?

A February 14, 1966.

Q Did you place that stamp on there?

A I did.

Mr. GEARON. I would like to offer this as Government's Exhibit No. 7, your Honor.

(A pause)

Mr. ROGERS. Objection, your Honor. The defendant in this matter is Phillip J. Stiles. This purports to bear the signature of a Phil Stiles.

Mr. GEARON. It also bears a Selective Service number, your Honor, that corresp nds with the one in the [50] questionnaire.

(A pause)

The COURT. It may be received and marked Government's Exhibit 7. The defendant's objection to the Court's ruling is noted.

(Post card, postmarked Knoxville, Tennessee, February 11, 1966, to Selective Service System, Local Board No. 4, Westerly, R.I., signed "Phil Stiles, # 37 4 45 78," marked United States Exhibit No. 7)

Mr. GEARON. Would you read both the printed material and the ink printed material, please?

The COURT. Does it bear a postmark as well?

Mr. GEARON. Yes, your Honor.

A The postmark is Knoxville, Tennessee; dated February 11, 1966.

"Selective Service System, Local Board No. 4, Town Hall, Westerly, R. I.

"Dear Sirs, I'm still thinking about you, and will let you know as soon as I have an address."

There is a signature of "Phil Stiles" and a Selective Service number has been upon on, "37 4 45 78." That number was on when I received it.

[51] Q Can you identify this document, please?

A Yes, I can.

Q What is it, please? Rather, did you receive that in the regular course of the mails?

A I did.

Q Does it bear a date stamp of Local Board No. 4, Westerly, Rhode Island?

A It does.

Q Who placed that stamp on there?

A I did.

Q Is this document kept in the regular course of business?

A Yes, it is.

Q And where is it kept?

A It is kept in the file of Phil Stiles, with a Selective Service number which I did not put on. It was there when I received it.

Mr. GEARON. I would like to offer this as Government's Exhibit No. 8, your Honor.

(A pause)

Mr. ROGERS. Same objection as to the last exhibit, your Honor.

The COURT. Very well; objection noted, overruled. It may be marked Government's Exhibit 8. The defendant's objection to the Court's ruling is noted.

[52] (Post card, stamped "Correo Aereo, Mexico," to Selective Service Local Board No. 4, Westerly, R.I., signed "Phil Stiles # 37 4 45 78" marked United States Exhibit No. 8)

Q Would you read everything that appears, on this card, please?

A "Feb. 15, '66."

It is addressed to Selective Service—

The COURT. What is the post mark; what city or state?

Q Can you make out the post mark?

A I am sorry; I can't. I think it is in Spanish.

Q The stamp on there: can you identify it, please, or can you read what is on the stamp, the postage stamp?

A It is a "50"—all capital letters: "CTS"; all capital letters: "Correo Aereo," and under it, "Mexico."

The COURT. Very well.

Q Would you read the rest of the matter on the post card?

A It was addressed to "Selective Service Local Board No. 4, Town Hall, Westerly, R. I.," with a zip code, "02891,"—capital letters: "E. V. A."

"Dear Sirs,

"My address for the time being is
"Lista De Correos
[53] "Vera Cruz, Ver.
"Mexico

"It would be nice if you could send me a new draft card, as having one would facilitate my return to the USA.

"Thank you."

There is a signature: "Phil Stiles," with a Selective Service number, "37 4 45 78," which I did not put on. It was there when I received it.

Mr. ROGERS. Objection, your Honor. Motion to strike, as the question was: would she read it. And this is the second time the witness has volunteered information. I move to strike at least that part, your Honor; volunteered information.

The COURT. The part, "I did not put on the draft number," may be stricken. The jury will disregard it.

In other words, the Selective Service number was already on the card when you received it.

The WITNESS. It was.

Q Mrs. Taylor, referring back to Government's Exhibit No. 5, is this a draft card?

A It is one of the draft cards.

Mr. ROGERS. Objection, your Honor. Again leading.

Mr. GEARON. She has already identified it, your [54] Honor, previously as a draft card.

Mr. ROGERS. I have an objection pending. It is leading.

The COURT. Suppose you ask the witness what—

Q What is this card?

A It is a notice of classification.

Q Is that commonly called a draft card?

A Sometimes referred to.

Q This is what was mailed back to you.

A With that.

Q Were all of these documents kept in the file of Phillip Jerome Stiles?

A Yes.

Mr. ROGERS. Objection, your Honor. Again leading. I hate to be technical, your Honor.

The COURT. All leading questions are not necessarily objectionable, Mr. Rogers. The fundamental objection to a leading question is that it suggests the answer. I don't see anything in that question that suggests the answer.

Try to refrain from asking leading questions, Mr. Gearon. We will get along much faster.

Q Where were these documents all kept that have been referred to as Government's Exhibits 1 through 8?

[55] A In the folder of Phillip Stiles.

Q And you are custodian of those files?

A I am.

Q And all the files of the Draft Board Local No. 4 in Westerly, Rhode Island?

A I am.

Mr. GEARON. Thank you. I have no further questions, Mrs. Taylor.

Cross-examination by Mr. Rogers

Q Now your name is Mrs. Taylor. Correct?

A Correct.

Q Mrs. Taylor, you are clerk of the Draft Board No. 4 in Westerly. Is that right?

A That is right.

Q By whom were you appointed?

A Well, I would say by Colonel Wilson.

Q Were you appointed by Colonel Wilson or were you not appointed by Colonel Wilson?

A Yes.

Q When were you appointed?

A I really can't tell you offhand when it was. I have been there many years. The exact date I do not remember.

The COURT. I think the date by year would be sufficient for your purposes rather than a precise date.

[56]

Mr. ROGERS. If your Honor insists, yes, your Honor.

The COURT. I am asking you. Do you want the precise day and the month or the year?

Mr. ROGERS. I would prefer the precise day and the month, your Honor.

The COURT. Can you recall in what month you were appointed, Mrs. Taylor?

The WITNESS. I really can't, but I am sure my headquarters could, if I might call them.

The COURT. Do you recall what year you were appointed? This is 1967 now.

The WITNESS. I know.

Clerk of Local Board No. 4 is the question, Mr. Rogers? Is that correct?

Mr. ROGERS. It is, yes.

The WITNESS. Approximately 1950.

The COURT. Approximately 1950?

The WITNESS. That is right.

Q And you say you were appointed by Colonel Wilson. Is that right?

A I believe—and why I hesitate: I am wondering if you mean the President of the United States or General [57] Hershey. I am not just sure to whom you are referring.

Q Suppose I ask you again. Whom were you appointed by?

A That is what I thought you asked me, and I am not sure.

Q You are not sure?

A Well, I am not sure whether it was Colonel Wilson, the President of the United States, or General Hershey.

Q Were you appointed for a term?

A No, I would not say for a term.

Q Your answer would be No?

A No.

Q Did you receive any certificate of appointment or anything?

Mr. GEARON. Your Honor. I don't see the relevancy.

The COURT. What is the materiality of this, Mr. Rogers?

Mr. ROGERS. The materiality: I would like to establish whether or not this woman is in fact the clerk of the Local Draft Board.

The COURT. She has testified she has been clerk of the Local Draft Board since 1950. And some of the documents already in evidence indicate she is the clerk, don't they?

Mr. ROGERS. They bear the signature of the witness and they use the word, "clerk," your Honor. And I respectfully submit she may or may not be the clerk.

[58] The COURT. Frankly, I don't see the materiality of this line of inquiry.

Mr. ROGERS. My point, your Honor, being she may or may not have authority to sign certain documents under the Selective Service Act.

The COURT. Absent any showing of any evidence she is or is not, I am not going to restrict the inquiry on

that score. This lady has served as clerk of that Board since 1950. I think we had better be realistic here.

Mr. ROGERS. Might we have the question?

(Last question read by reporter as follows:

"Did you receive any certificate of appointment or anything?")

A I believe I have an appointment, a certificate of appointment. I am sure Colonel Wilson can identify me.

Q So then your answer is you do have some type of certificate?

A Yes, I do.

Q To the best of your knowledge, are you appointed for a term or not?

A No.

Q You are not appointed for a term. I see.

Now who are the members of the Draft Board No. 4 in Westerly, do you know?

Mr. GEARON. Your Honor, I am going to object to [59] this. I don't see the materiality or relevancy.

The COURT. I don't either. What is the materiality of who are the members of Local Draft Board No. 4?

Mr. ROGERS. May it please the Court, it might be the members of the Local Board gave to the clerk of this Board authority to send induction notices, et cetera, out.

Mr. GEARON. Your Honor, the record is not subject to collateral attack.

The COURT. No, I think not. I will sustain the objection to any inquiry along this line.

Q Do you customarily sign induction notices?

A I do.

Mr. GEARON. Objection again, your Honor. I am going to object again, your Honor. The only way the record can be attacked is by an appeal to the Draft Board of Appeals. The record cannot be attacked collaterally in this examination.

Mr. ROGERS. If it please the Court, I am not collaterally attacking anything other than the induction notice itself. And it is not a collateral attack, your Honor; it is a frontal attack. And I respectfully urge upon the Court that the question is certainly germane to whether

or not this defendant, who is charged with failing to obey an induction notice, is in fact required to obey an induc-
[60] tion notice that may or may not be valid.

Mr. GEARON. Again, your Honor, the validity can only be attacked by appeal.

The COURT. I know of no requirement of the Draft Board that each and every member of the Draft Board should sign a notice to the registrant. If it is signed by the Clerk, I think that is sufficient.

Mr. ROGERS. May it please the Court, my point is not that it must be signed by anybody—the membership of the Board. My point is quite different, your Honor.

The COURT. What is your point?

Mr. ROGERS. If I might have the question read back, your Honor.

(Last question and answer read by reporter as follows:

"Q Do you customarily sign induction notices?
"A I do.")

Mr. ROGERS. My point being, your Honor, that perhaps this witness does not have authority to sign an induction notice. Therefore, an induction notice signed by her would in fact be invalid, your Honor.

The COURT. That may be your point, but I don't
[61] think it is well taken. The record of the Board indicates notice was sent. The witness has so testified. It is not open to collateral attack. I will sustain the objection.

* * * * *

[74] Q And the address on this is 10 Fortin Road. Isn't that right?

A That is correct.

Q This has a date of mailing stamped on there. Did you stamp that date on there: January 24, 1966?

A I did.

Q You did. What address did your files reveal as being the most recent address of Phillip Jerome Stiles on January 24, 1966?

A I would have to look at it—at the folder.

Q The questionnaire—the questionnaire was—do you

[75] have any stamp as to when this went on file, Mrs. Taylor?

A Yes, it is in the upper righthand corner.

Q When did that go on file, Madam?

The COURT. Referring now to Exhibit No. 1?

Mr. ROGERS. Yes, your Honor; Selective Service questionnaire.

A May 8, 1963.

Q May 8, 1963. And the induction notice bears a date of January 24, 1966?

A Correct.

Q Did you not receive other addresses for the defendant between the date of this questionnaire and the date of the induction notice?

A I would have to look at the folder to be sure.

Q Madam, didn't you read little post cards and letters for Mr. Gearon, and withnot, with changes of address, et cetera, here just a few minutes ago?

A I did.

Mr. GEARON. I think the changes of address speak for themselves. They were subsequent to the notice to report for induction.

Mr. ROGERS. That might be, your Honor. It might be. My question to her was: was there any—I will rephrase my question.

[76] Q The date of the Selective Service questionnaire went on file as what, Madam?

A May 8, 1963.

Q And the date of your induction notice is January 24, 1966. Correct?

A Yes.

Q At any time between the date of putting the questionnaire on file and issuing the induction notice, did you have any knowledge of any address other than 10 Fortin Road, Kingston, Rhode Island?

A Yes, we did.

Mr. ROGERS. Excuse me, your Honor.

* * * *

[82] Q And you have testified that you received information relative to the whereabouts of Phillip J. Stiles from time to time. Is that right?

A That is right.

Q But no entries of those are made in this record. Is that right?

A That is correct.

Q. And the address remained as it was originally. No changes were made.

[83] A Changes were made of the current addresses on the folder.

Q On the folder, but not on this.

A They are not supposed to be on here.

Q Or any of the exhibits entered so far. Is that right? Changes of address?

A No, no.

Q This form indicates that on June 6, 1963 the defendant was classified 1-A. Is that correct?

A That is correct.

Q Then 3-11-64, 1-A.

A Correct.

Q Is that the reclassification?

A Of 1-A; correct.

The COURT. What, please?

Mr. ROGERS. It is a reclassification to 1-A, your Honor.

The COURT. The witness said something.

The WITNESS. I said: that is correct; reclassification.

The COURT. In other words, there was a different classification sometime between June '63 and March '64.

The WITNESS. Not a different one, no, but he was just reclassified 1-A.

Q This is normal procedure?

[84] A Yes.

Q October 29, '64, does that say 2-S to October '65?

A That is correct.

Q Is this 2-S a student-type classification?

A Correct.

Q On 11-9-65 it says 1-A.

A That is correct.

Q Does that mean reclassification?

A Yes.

Q And I am trying to recall your testimony that you do this when you receive information, et cetera. Right?

A That is correct.

Q Did you receive—does this record indicate the receipt of any information relative to change in classification?

A That record doesn't.

Q It does not.

A No, but we did not have confirmation that he was at University of Rhode Island at that time. That is why he was classified 1-A.

Q You say that you received no confirmation from the University?

A We have to have it confirmed for all registrants.

Q Is there any entry here directing the defendant to [85] produce this or obtain this for you?

A That is the registrant's responsibilty to see that we are informed. All registrants know that.

Q So that on November 9, 1965 the defendant was reclassified 1-A.

A That is correct.

Q I take 1-A to mean available.

A That is right; it does.

Q Do your records indicate a reclassification any time from 11-9-65 until the date that the order to report for induct was mailed out?

A No.

Q Might I ask you whether or not your customary procedure for delinquency for failure to report for physical, et cetera, is sent by registered mail?

The WITNESS. What was the question? Is it usual to send—

Mr. ROGERS. Yes.

A No.

Q Certified mail?

A No, straight mail.

Q Regular mail?

A Yes.

Q The ordinary mail?

[86] A That is right.

Q No first class or return receipts, or any such?

A No return receipts, just regular mail.

Q Now the induction notice—do your records indicate whether or not that was sent registered or regular mail or certified mail?

Mr. GEARON. Objection, your Honor. The Code says all it has to be is just mailed to his last and usual place, according to the records of the Draft Board. I don't think he can go into that at all.

Mr. ROGERS. If it please the Court, Mr. Gearson referred to CFR, which, I believe, is Current Federal Regulations.

Mr. GEARON. Code of Federal Regulations.

Mr. ROGERS. Code of Federal Regulations. He quoted from some section of that, your Honor.

The COURT. He quoted Section 1641.3.

Mr. ROGERS. Yes, your Honor. But I don't believe Section 1641.3, your Honor, would prohibit me from inquiring as to the manner of the mailing.

Mr. GEARON. All right.

Mr. ROGERS. Might I have leave of Court to look at 1641.3?

(A pause)

[87] Mr. ROGERS. I would like to read it to the Court, your Honor.

The COURT. Suppose you pass it up, if you will.

Mr. ROGERS. Yes, your Honor.

(A pause)

The COURT. I have read it.

Mr. ROGERS. May it please the Court, Section 1641.3 doesn't say anything with reference to the manner in which something is mailed, your Honor.

The COURT. It doesn't make any provision it be sent by registered mail or receipt requested. It simply provides that sending by mail is sufficient.

Mr. ROGERS. Yes, your Honor.

Q Was anything sent, according to your records, certified or registered mail, to the defendant except an induction notice?

A Yes, we sent—you asked if any communication was sent registered?

Q Yes, other than this induction notice.

A Yes. If I look at the folder, I can see that there was.

The COURT. Suppose you give the witness the folder, Mr. Gearon, so that she can—

What is it, the folder you wish, Mrs. Taylor?

The WITNESS. Yes, please. Thank you.

[88] Q Yes, Ma'am; there are other things.

A There are others, yes.

Q Do your records indicate on the questionnaire at least or do you have any record with you that indicates the manner in which things were mailed?

The COURT. The manner what?

Mr. ROGERS. The manner in which things were mailed.

Q (Continuing) Regular, certified, registered?

A I have the notes here.

The COURT. You have what, please?

The WITNESS. I have the receipts here.

The COURT. Registered mail records?

The WITNESS. That is correct.

Q And do the receipts indicate—do they bear the signature as recipient of the defendant in any of them?

The WITNESS. What was the question again?

Q Do the receipts bear the signature of the defendant as being a recipient of any of them?

A They bear the signature on one of a Phillip Jerome Stiles.

Q They bear the signature on one. What is that?

A That is the delinquency notice, one delinquency notice.

The COURT. Delinquency notice. What is the date of that?

[89] The WITNESS. January 6, 1966.

The COURT. It bears the signature of Phillip—

The WITNESS. —Jerome Stiles.

Q And do the others bear the signature of Phillip Jerome Stiles?

A They bear the name of Phillip Jerome Stiles.

Q Who, for example, on this one is listed as the signature of addressee's agent? What does that say?

A Grace Ellen Stiles.

Q And the other one?

A The same: Grace Ellen Stiles.

Q And on Government's Exhibit No. 2 what is the signature of the recipient?

A Of the recipient?

Q Yes.

A Grace Ellen Stiles.

Q I believe the bottom one under the folder—no, right on top of the folder.

A That is the questionnaire.

Mr. ROGERS. That is a Government's exhibit, so I am going to return this where it belongs. Excuse me, your Honor.

(A pause)

Q You have testified you have been clerk of this Draft [90] Board for quite some time.

A Right.

Q I would like to clear something up. You were asked were you the only employee, and I believe your answer was you truthfully couldn't say. Is that right?

A I am trying to think.

Mr. GEARON. Objection, your Honor, to that question. That wasn't her answer at all. She didn't say she truthfully couldn't say. What she said was that from time to time there were others sent to assist her.

Mr. ROGERS. I prefaced my remarks by saying, "I believe." I am willing to have the record examined. My recollection is her answer was "I truthfully couldn't say."

(Previous testimony read by reporter as follows:

"The COURT. Were there other part-time clerks in the Board?

"The WITNESS. When we were very busy, the headquarters would always send me help. I couldn't truthfully say I never had any help during that time.")

Q Do you recall whether or not, from the time that this questionnaire was completed until the induction notice

was sent out,—whether or not anybody was working with [91] you in this Draft Board?

A I am sure no one worked on that particular folder at that time.

Q Could you tell me whether or not anybody else worked there with you during those periods, from the time of the completion of the questionnaire until the mailing of the induction notice?

A The question is: was there ever a part-time clerk down there.

Q No, Ma'am. The question is: whether or not anybody else worked with you at Local Board No. 4 from the time of the completion of this questionnaire, or April 1963, until the sending of the induction notice?

A Then that would be a part-time clerk, someone sent from headquarters to help me.

Q Would the answer be yes or no?

A Well, that is a span of three years.

Q Yes, Ma'am.

A There probably was someone sent down because it is a fairly large board.

Q Now you say that nobody else worked on this file. Might I ask you, Madam, how you would know that?

A Well, in looking at the file, it is all initialed by me. Therefore, no one else worked on it.

* * * *

[96] *Redirect examination by Mr. Gearon*

Q A reference was made on cross-examination, Mrs. Taylor, to a delinquency notice sent to Phillip Jerome Stiles pertaining to a failure to report for a physical examination.

Is this the document, Mrs. Taylor, or a copy of it?

A That is correct.

Q And to whom is the original sent?

A To the registrant, Phillip Jerome Stiles.

Q Is this a copy made in the regular course of business at your office?

A It is.

Q Did you prepare the receipt that is on the top appended to that form?

A The Post Office prepared it; I didn't.
Q Was it prepared in your presence?
A Yes.
[97] Q And the pink document—was that prepared in your presence?
A Yes.
Q Did you receive that in the regular course of the mail?
A Yes.
Q Does it bear the stamp of the Local Board No. 4 of Westerly—the date it was received?
A Yes, it is.
Q What is the date?
A January 14, 1966.
Q And what is it called, please?
A You mean this form?
Q This document, yes.
A Delinquency notice.
Q Was this kept in the file of a Phillip Jerome Stiles that bore the Selective Service number that appears on there?
A It did. It was.
Mr. GEARON. I would like to offer this as Government's Exhibit No. 9, your Honor.

(A pause).

Q Could you tell us what that number is on the receipt, please?
A 1711.
[98] Q And the number on the pink receipt?
A 1711.
Mr. GEARON. I offer this as Government's Exhibit No. 9, your Honor.
The COURT. It may be marked Government's Exhibit 9.

(Selective Service System delinquency notice, Rhode Island Local Board, No. 4, Westerly, R.I., dated January 11, 1966, to Phillip Jerome Stiles and two attached post office receipts, dated January 11 and January 13, 1966, respectively, marked United States Exhibit No. 9)

Q Would you read the document marked "Deliquency Notice," please?

A "Date became delinquent: January 6, 1966.

"Date of mailing: January 11, 1966.

"To Phillip Jerome Stiles, Selective Service No. 37-4-45-78.

"Address: 10 Fortin Road, Kingston, Washington County, Rhode Island.

"You are hereby notified that this Local Board has declared you to be a delinquent because of your failure to perform the following duty or duties re-
[99] quired of you under the Selective Service Law:

"To report for Armed Forces Physical Examination January 6, 1966."

The WITNESS. Do you want the printing down here? (indicating)

Mr. GEARON. No.

Q You sent that by registered mail. Is that correct?

A Yes, I did.

Q Does this pink document bear a signature as the receipt?

A There is a name here: "Phillip Jerome Stiles."

Q On what line does that signature appear?

A "Signature or name of addressee."

Q Now, Mrs. Taylor, subsequent to January 6, 1966, did you receive any communications by telephone from a person who purported to be Phillip Jerome Stiles?

A Did you ask me before January 6th or after?

Q No, subsequent to.

A Subsequent to January 6?

Q Yes, subsequent to, Mrs. Taylor.

A It was after January 6th I received a telephone call, yes.

Q Did the caller identify himself to you?

A Yes, he did.

Q And who did he say was calling?

A Phillip Stiles.

[100] Q Can you recall what that conversation was?

Mr. ROGERS. Objection, your Honor.

Q Did you have a conversation with a person who identified himself as—

The COURT. She has already testified to that. What is your objection?

Mr. ROGERS. My objection, your Honor, is that the witness is not qualified as being conversant with the voice of the defendant.

The COURT. I think absent some foundation the objection is good, Mr. Gearon. I will sustain it.

Q Previous to January 6, 1966, did you ever have any conversation with a person who identified himself as Phillip Jerome Stiles?

A Previous to that?

Q Yes.

A I would have to look at the folder. The notes are made there.

The COURT. Mr. Gearon, let's find out if she had any conversation with the defendant, Phillip Stiles, before the Court.

Q Subsequent to January 6, 1966, did you have any telephone conversation with Phillip Jerome Stiles, the defendant in this case?

[101] Mr. ROGERS. Objection, your Honor. Same objection.

The COURT. I want a foundation laid that she knew the defendant's voice and was familiar—

Q Did you know the defendant's voice?

A I would not say I knew his voice. I answered the telephone, and someone said he was Phillip Stiles.

Mr. ROGERS. Motion to strike all after, "I do not know his voice."

The COURT. I think the motion is good. The jury will disregard any testimony concerning the telephone call.

Mr. GEARON. Thank you, Mrs. Taylor. That is all.

Mr. ROGERS. I might want to ask a question, Mrs. Taylor, if you please.

The COURT. Go ahead.

Recross-examination by Mr. Rogers

Q Very briefly, Defendant's Exhibit No. 9, pink slip: what is in the box to show where delivered?

A To a box, post office box.

Q And what does it say?

A You mean the number?

Q Yes. Would you read the entry, please?

A "Box 34, Post Office, Kingston, R. I."

[102] Q May I see this, please, Madam? Did you request that the Post Office show to whom, when, and address where delivered? Did you mark that box on that card?

A Did I personally mark it?

Q Yes.

A. Oh, no.

Q Was it marked in your presence?

A Yes.

Q So then you knew—

A Yes, I asked them to do it.

Q That is to indicate where the communication is delivered. Is that right?

A That is correct.

Q Where does that card reveal the thing to have been delivered?

A To a post office box in Kingston, Box 34.

Q What is the address that you mailed it to?

A 10 Fortin Road.

Q So the address that it was received at and the address it was mailed to, is there any difference?

A Well, a post office box is not, of course, a street address. But when one has a post office box and picks the mail up, that is for that purpose.

Q So then it is proper for me to say it was mailed to [103] one place and received at another. Is that right?

A Well, it was received at a post office box, and it was addressed to the registrant's home. But the Post Office, I am sure, would not have put it in that box if it were not the box of Phillip Jerome Stiles.

Q Madam, how are you sure of this?

A Because I believe in the Post Office's ability.

Q I believe in the Post Office's ability also, Ma'am. You addressed it to 10 Fortin Road. Is that right?

A Correct.

Q And you instructed the Post Office to tell you where it in fact was delivered. Right?

A That is right.

Q Was it delivered to 10 Fortin Road?

A It was delivered to the post office box.

Q Then by your answer I take it it was not delivered to 10 Fortin Road. Right?

A According to the receipt.

Q And that receipt was mailed back to you.

A Correct.

Q What was the date that that was sent back to you?

A Sent back or received back?

Q Received back.

A January 14, 1966.

[104] Q Now as the result of receiving that receipt, did you change the defendant's address in any of your forms at the Draft Board—his address?

A I couldn't tell without looking at the folder. And 10 Fortin Road is his home address. There was no reason to change it.

Q That is not the question that I asked you, Madam.

A Then I wouldn't know without looking at the folder. (A pause) There is no post office box number on here.

Q So that it is a fair assumption for me to make that on and after the date of that receipt, which is January 14, 1966, you were aware of a different address.

Mr. GEARON. Objection, your Honor.

A No, I don't agree.

Mr. GEARON. Objection, your Honor. The only address that can be used is the address that the registrant himself gives to the Draft Board on its official documents.

The COURT. I think that is so.

Mr. ROGERS. If it please the Court, nothing has been established who gave this yet. Mr. Gearon might be correct and it might just turn out to be the defendant gave that address. We don't know that yet.

The COURT. Gave what address?

[105] Mr. ROGERS. The post office box.

The COURT. You may ask the witness if at any time the defendant gave that additional address, if you wish.

The WITNESS. No.

Q But you did receive something back, indicating a different receiving place for mail. Right?

A Indicating a post office box number in the same town, yes.

Q A post office box customarily being a receiving place for mail.

A Correct.

Mr. ROGERS. Nothing further. Thank you.

Mr. GEARON. Thank you, Mrs. Taylor.

The COURT. It is pretty close to our customary luncheon hour. We will stop here until 2 o'clock.

(Noon recess)

AFTERNOON SESSION
2:05 P.M.

JOSEPH P. FINNEGAN, Sworn

Direct examination by Mr. Gearon

Q Mr. Finnegan, what is your business or profession?

A I am a special agent of the Federal Bureau of Investigation.

[106] Q To what office are you assigned?

A To the Providence, Rhode Island, office.

Q How long have you been an agent of the Federal Bureau of Investigation?

A Almost 20 years.

Q Do you recognize the defendant in this case, Mr. Finnegan?

A Yes, I do.

Q Have you ever seen him before?

A Yes, I have.

Q Under what circumstances have you seen him before?

A I interviewed him in my office on April 13, 1966.

Q Did you tell him the purpose of the interview?

A Yes, I did.

Q Did you warn him of his constitutional rights?
A Yes, I did.
Q Did you warn him of his right to remain silent?
A Yes, sir.
Q Did you warn him of his right to counsel?
A Yes, sir.
Q Mr. Finnegan, did you tell this defendant—
Mr. GEARON. Withdraw that, please.
Q Did he tell you what his name was?
A Yes, sir.
Q What did he tell you his name was?
[107] A Phillip Jerome Stiles.
Q Did he tell you his address?
A Yes, sir.
Q And what address did he give you?
A 10 Fortin Road, Kingston, Rhode Island.
Q Now, Mr. Finnegan, did you tell him the purpose of the interview?
A Yes, I did.
Q Did you ask him any questions?
A Yes, I did.
Q What did he say to you?
A I informed him that I wanted to talk to him about the fact that he had been reported delinquent by Local Board No. 4 in Westerly, Rhode Island, for failure to report for a physical examination and for failure to report for induction, as ordered by that Board.

He told me that he did not report, and that he would report for a physical examination, but that he would not report for induction.

Q On what date was this, Mr. Finnegan?
A On April 13, 1966.
Q Did he tell you that he was ordered to report for a physical examination on January 20, 1966?
A Yes, sir.
[108] Q Did he tell you that he did not appear?
A Yes, sir.
Q Did he tell you that he did not appear for induction on February 9, 1966?
A Yes, sir.
Q Did he ever tell you that he received an order to report for a physical examination?

Mr. NOTTE. Your Honor, I am going to object to this; leading.

The COURT. I think it is somewhat leading. But what did he tell you, Mr.—

Q What did he tell you, Mr. Finnegan, concerning an order to report—well, what did he tell you? Did he tell you that he received an order to report for a physical examination on January 20, 1966?

Mr. NOTTE. Objection, your Honor; leading again.

The COURT. He can answer that yes or no.

A He told me that he did receive an order to report for induction—for a physical examination on January 20, 1966.

Q Did he ever tell you that he received an order to report for induction?

A Yes, sir.

Q Did he tell you—

[109] Mr. GEARON. Withdraw that, please.

Q Did you question him concerning his failure to report for induction?

Mr. NOTTE. Objection, your Honor; leading.

The COURT. I will allow it.

A Yes, I did.

Q Did he say anything to you concerning the induction order?

A The induction order?

Q Yes.

A He said that he was aware of the induction order when he returned to his residence after a trip to Mexico.

Q Did he tell you when he returned from that trip to Mexico?

A Not specifically, no.

Q What was the date of this interview again, Mr. Finnegan?

A April 13, 1966.

Mr. GEARON. I have no further questions. You may inquire. Excuse me.

Q (By Mr. Gearon) Is this the same Phillip J. Stiles? (indicating)

A Yes, that is the man I interviewed.

Mr. GEARON. You may inquire.

[110] *Cross-examination by Mr. Notte*

* * * *

[113] Q And it is your statement that the defendant told you he was aware of the induction order after he returned from Mexico.

A Yes.

Q This conversation took place on April 13, 1966.

A Yes.

Q Had the defendant just returned from Mexico, to the best of your recollection?

[114] A I don't know how long he had been back.

Q Had you been trying to contact him?

A No, I hadn't been trying to contact him.

Q You only tried once, and you were successful in reaching him.

A Yes, the first time I tried I was successful in reaching him.

Q Was anything said about when he left for Mexico?

A Yes. He said that he had left for Mexico before the induction notice arrived at his residence.

Q And was there anything said about his being in Mexico at the time this induction notice must have actually arrived at his residence?

A No, only that he had left for Mexico by the time it did arrive.

Mr. NOTTE. Excuse me, your Honor.

(A pause)

Q Mr. Finnegan, during the conversation that took place on April 13, 1966, did the defendant at any time say to you that he—using the word, "he,"—had received an induction notice?

A Yes.

Q He said that he had received one?

A When he returned to his residence in Kingston, Rhode Island.

[115] Q He became aware—

A Apparently his mother gave it to him or he found it in the mail that had accumulated for him.

Q Did the defendant tell you why he would not report for induction?

A Yes. He said that at times he was confused and anxious and that he felt like a pawn in a big government thing.

* * * *

[118] Q Now in regard to Stiles' failure to report for a physical exam, as ordered on January 20, 1966, would you read your answer here, please?

A "Stiles replied that he did not really know why he [119] did not appear."

The WITNESS. Want the rest of it?

Mr. NOTTE. Yes, please.

A (Continuing)

> "He offered as an example the fact that he had registered at the University of Rhode Island and then failed to attend classes and has as a result failed the course. It was pointed out to him that his obligations to the University of Rhode Island in attending classes were not analogous to his obligations to comply with the Selective Service law. Stiles continued that from time to time his thinking changes and that from one moment to another he really does not know why he does things. He stated that he had made arrangements with Richard Pearl, a student at the University of Rhode Island, living at the Kingston Inn, to borrow Pearl's car in order to travel to Westerly, Rhode Island, to report for a physical examination. He had Pearl's car at his residence in order to make this trip. He stated that as he recalled he was up [120] late the night before and did not get up in time to report for the physical examination. He admitted that he was aware of the fact that he was supposed to report for the physical examination on January 20, 1966, but made no particular effort to do so on that date."

Q And this paragraph—there is one more paragraph in answer to that question. Would you read that, please: "He was again questioned . . ."?

A "He was again questioned as to why he did not appear at the physical examination scheduled for

January 20, 1966, and he said that he felt like a pawn in a big government thing. He didn't want to report for the physical examination and yet was aware of threats of what would happen if he did not. He stated that he was confused and anxious."

Q There is a notation here that

"Stiles refused to furnish a signed statement concerning his Selective Service delinquency."

* * * *

[123] Q According to the testimony that you have given here, the defendant, Phillip Stiles,—Phillip J. Stiles—was not aware of any induction notice until after the induction notice was mailed and received by someone else. Is that correct?

A That is right.

* * * *

[124] Q Mr. Finnegan, on that particular day did the defendant, Phillip Jerome Stiles, tell you that he was aware of the induction notice only after the induction notice was sent and received by someone else?

I might have asked another question similar to it, but I would like to put it to you this way: was he aware of this induction notice only after it was sent and received by someone else?

A Yes.

* * * *

[125] Q Was there anything said about his Mexican trip?

A You mean a discussion of the trip other than the fact that he received—that he became aware of the induction notice after returning from Mexico?

Q That is correct.

A I have no recollection of any discussion of his Mexican trip other than that mentioned.

* * * *

[127] Q In your conversation with the defendant on this day was it clear to you, from what the defendant said, that he did not have any notice—any knowledge of the induction notice until after February 9, 1966?

A It was clear to me that he did not become aware of the induction notice until he returned to his residence from a trip to Mexico. As to when he returned from that trip, I am not certain.

* * * * *

[132] Q Mr. Finnegan, you have been in the courtroom this morning. Is that right?

A Yes, sir.

Q Did you hear the testimony of Mrs. Taylor?

A Yes, sir.

Q Did you hear the testimony relative to a post card received by Selective Service Board No. 4?

A Yes, sir.

Q Did you hear the testimony relative to a particular post card dated February 15, 1966?

A I remember a post card dated in February.

Mr. NOTTE. Your Honor, I am in reference now to [133] Exhibit No. 8.

The COURT. 8?

Mr. NOTTE. Yes, your Honor.

Q Mr. Finnegan, would you please read the postmark on that post card, please?

A Dated 18 February—

The COURT. 18?

The WITNESS. February.

A (Continuing) —it appears to be 1966. And it has the letters stamped, letters "VER" on the top and the letters, "VE," on the bottom. The complete stamp is not entirely legible.

Q Would you read the stamp, please, the postage stamp?

A "50 CTS, Correo, Aereo, Mexico."

Q Would you read the date and the message? Would you read the date and the address given, please,—handwritten?

A You mean this address? (indicating) February 15, 1966.

Do you want the message?

Q Just the address.

A The address within the message?

Q Yes.
A "Lista de Correos, Vera Cruz, Ver., Mexico."
Q Who is that signed by, please?
A It bears a signature in the name of Phil Stiles.
[134] Q Is there any other identification mark with the signature?
A There is a number: 37 4 45 78.
Q To whom is it addressed, please?
A "Selective Service Local Board No. 4, Town Hall, Westerly, R.I."
Q And is there a receiving date on it?
A There is a stamp on the post card; says "Rhode Island Local Board No. ....."—can't read it—"February 21, 1966, Town Hall, Westerly, R.I."
Mr. NOTTE. Thank you. No further questions, your Honor.

* * * *

Redirect examination by Mr. Gearon

Q Mr. Finnegan, just one question. The defendant Stiles told you that he would not report for induction. Is that correct?
A Yes, sir.

* * * *

[135] ROBERT L. WILSON, Sworn

* * * *

[139] *Cross-examination by Mr. Rogers*

* * * *

[140] Q Did you have any activity with reference to arranging a physical with this defendant; not what you do regularly? And your answer, sir?
The COURT. On February 9, 1966.
A No.
[141] Mr. ROGERS. At any time, your Honor.
The COURT. I am limiting this to the date of induction, February 9, 1966.
A (Continuing) On February 9th I had no personal arrangement with him.
Q Did you ever have any conversation with the defendant?

A I believe I did.

Q Did you ever have any conversation with reference to a physical examination?

Mr. GEARON. Your Honor, I would like to object to that question.

The COURT. Objection sustained.

Q Did your office ever schedule an examination?

Mr. GEARON. Objection, your Honor.

The COURT. Objection sustained. I have indicated, Mr. Rogers, that the sole question here is whether or not this defendant reported for induction on February 9th; if he did not, whether his failure was wilful. I am not concerned with any examinations.

Mr. ROGERS. Yes, your Honor.

* * * *

[145] Q Colonel, you say a person can't be inducted into the military without a physical examination. Is that correct?

A That is true. Well, without taking the full physical examination and passing.

Q Pardon me, sir?

A He must pass. He has to have a full physical examination on the day of induction and, of course, be acceptable.

Q And he cannot either pass or fail without being given one. Correct?

A He cannot be inducted without taking a physical examination.

* * * *

[149] Mr. ROGERS. Your Honor, reserving our right to go forward and put in a defense, we move to dismiss the indictment against the defendant.

The COURT. Are you in effect making a motion for judgment of acquittal under the rule?

Mr. ROGERS. Yes, your Honor.

The COURT. Very well.

Mr. ROGERS. The indictment charges that on or about the 9th day of February 1966 in Providence, the defendant, being a person over the age of 18 and under the age of 26, did wilfully and knowingly fail, neglect, et cetera, to comply.

[150] I feel, your Honor,—and I realize that this is a technical motion, but I feel that the prosecution, your Honor, must prove each—and I realize not beyond a reasonable doubt also, your Honor,—that they certainly should show a prima facie case with reference to the indictment.

There is no evidence before this Court whatever, if it please the Court, that anything took place in the City of Providence. There is no evidence that he reported or didn't report at Providence. I believe that the exhibits don't require him to report at Providence, your Honor.

The COURT. Didn't Exhibit 3 indicate that he did not report for examination and induction?

Mr. ROGERS. I believe, your Honor, his induction notice required him to report to Westerly, in the Town Hall. I believe that I am correct, your Honor, in that the induction notice requires him to report at Westerly.

The COURT. It ordered him to report at Westerly for forwarding to an Armed Forces induction station.

Mr. ROGERS. Yes, sir. And, if it please the Court, the indictment says that at Providence he did thus and so. There is not one scintilla of evidence in this case with reference to his reporting or not reporting at Providence. [151] The only evidence—and the Government brought the exhibit in, not I, your Honor,—it requires him to report at Westerly. I feel there is a variance between the indictment and the proof.

The Government certainly, your Honor, presented this matter to the Grand Jury. They sought the indictment. And I feel they are bound by each and every word in the indictment, your Honor. The Government entered not only the induction notice over my objection, they entered with it also the two little receipts, so to speak. I feel that certainly, your Honor, there is a fatal variance between the indictment and the proof. The prosecution certainly could have appeared before this Court to move to amend their indictment and didn't do so. Therefore, your Honor, I feel that at this point in the proceedings they are bound.

In addition, your Honor, again a technical point—however, I feel that the evidence with reference to the defendant's age may or may not be accurate. The indictment says he is a person over the age of 18 years and under the age of 26 years. If the age was at all established, it was estab-

lished by introduction of the questionnaire. The agent from the Federal Bureau of Investigation was asked whether or [152] not he checked out the data with reference to height, weight, age, et cetera, and he said no. Therefore, the accuracy of his report, which wasn't introduced, at any rate, your Honor,—but his testimony on the record, I would say, would not be conclusive. I submit that the burden of the prosecution is to establish by evidence, with legal independence, a defendant's age. I feel that the age was not in fact established, your Honor. I feel that the age was not in fact established by credible evidence before the jury certainly.

Additionally, I would move to dismiss on the grounds that the indictment is ambiguous in that it speaks in the conjunctive rather than the disjunctive. It charges that the defendant did fail, did neglect, and did refuse. I submit that the indictment is compound, and that indictments should in fact be in the disjunctive and not in the conjunctive.

Additionally, your Honor, I know Mr. Gearon has referred to—I am forgetting what it is that he refers to, but some regulation about mailing things, your Honor.

The United States Code Annotated, your Honor, at Title 50, Section 4—

The COURT. Title what?

[153] Mr. ROGERS. Title 50, your Honor, Section 454, says—and I quote at page 256, your Honor:

> "No person shall be inducted into the Armed Forces for training and service or shall be inducted for training in the National Security Training Corps under this title (sections 451-454 and 455-471 of this Appendix) until his acceptability in all respects, including his physical and mental fitness, has been satisfactorily determined under standards prescribed by the Secretary of Defense: . . ."

I submit that this is the controlling law. I submit that all the evidence in this case indicates that at no time was the defendant in fact given a physical examination by anyone. I submit that under the law of this country as it exists—and I feel I have quoted it correctly—that he cannot be

inducted into the military forces unless and until he is in fact examined. And I indicate to the Court that the language is not permissive; it is mandatory. It says: "No person shall be inducted," et cetera, et cetera, "until his acceptability in all respects has been satisfactorily determined under standards prescribed by the Secretary of Defense."

[154] The indictment charges him, your Honor, with failing to report for induction. And I submit to the Court that under the law of this country, as it exists, he can't be inducted unless and until he has in fact been examined and his suitability for service in the Armed Forces as to physical and mental fitness has in fact been established satisfactorily. Understand, it is prescribed by the Secretary of Defense. All of the orders in this case, your Honor, indicate that at no time was he given an examination.

Additionally, again Mr. Gearon refers to the fact that a person must let his Draft Board know where he is, et cetera, et cetera. And I say, your Honor, the section of the law or the section of rules and regulations that he read from does not, in and of itself, eliminate the necessity for either certified or registered mail notice to a defendant or to a registrant.

It uses the word, "mail." Nowhere does it specifically say that regular mail is acceptable or unacceptable. Nor does it say that it is necessary to use certified or registered mail. I submit that in a criminal prosecution a strict construction of the statute should apply and the defendant should be given every benefit of every doubt.

[155] Therefore, the evidence in this case clearly indicates that an induction notice was in fact sent. It was addressed to 110 Fortin Road, I believe,—excuse me, your Honor,—10 Fortin Road in Kingston, Rhode Island. A witness from the Federal Bureau of Investigation testified that he learned from the defendant that the defendant was aware of the induction notice after the reporting date listed thereon.

I am also pressing the point, your Honor, that witnesses indicated that a postal card, dated February 15, 1966, was directed to the Draft Board from Mexico.

I submit also that the evidence will indicate clearly that the registrant, and the defendant, did not accept the registered mail, but, rather, his mother.

And I anticipate Mr. Gearon will again read to us this paragraph, but I submit that it does not eliminate, in and of its terms, the necessity for registered mail. It doesn't make the other type mail permissive.

In examining the clerk of the Local Draft Board, your Honor, I attempted to discover whether or not she had in fact been permitted—whether or not she had the authority to issue induction notices. I question whether or not, your Honor, she does in fact have the authority to [156] send an induction notice. I question whether or not the induction notice that she sent was ever received by the defendant. I am not attacking the classification of the defendant. I am not trying to attack it collaterally. I say that there is nothing in our law that denies a defendant notice. Certainly one can see where the rule is relaxed in a civil situation, but not in a criminal situation.

With reference to whether or not this particular woman had authority to send the order that she says she sent, I think that this is a vital point and I think that the prosecution is required, or should be required, to show by what lawful authority she sent anything to anyone anywhere. The Draft Board had notice—and I am certain the record will bear me out—that this woman sent something to the defendant, and again at 10 Fortin Road in Kingston, and it was received at Post Office Box 34 and not at 10 Fortin Road. Therefore, the Draft Board was aware of the fact that there was a variance between the stated address and the place where the mail is in fact received.

I feel, your Honor,—certainly not to labor the point, I do feel that while the objections—most of them—might in fact be technical,—I submit that this is a criminal [157] matter and that the defendant certainly should be given every consideration in a motion such as this.

And I would urge upon the Court that nobody—nobody—has come forward to say that the United States Code Annotated, Title 50, Chapter 454, has been modified and that the requirement for a physical examination prior

to induction has in fact been eliminated. Agreed, your Honor, the defendant did not in fact submit to a physical —the evidence will probably state—but nonetheless, your Honor, the requirement is on the Government. They are the prosecutors in this case; and unless and until the fitness, including the mental and physical fitness, has been satisfactorily determined, I submit that the defendant couldn't be inducted at any rate, and I submit that the indictment is in fact defective for the reasons that I have mentioned.

Thank you.

Mr. GEARON. Your Honor, I think most of these objections are without merit. First of all, many of them are matters of rebuttal. But to get on to the one about on or about the 9th day of February 1966 at Providence, the exhibit I have shown your Honor orders the registrant to report at the Town Hall in Westerly; to paraphrase it, [158] to proceed to the induction center. He did not report at Westerly, nor did he report in Providence, and there was ample testimony to that effect. The records speak for themselves. They cannot be attacked.

Because of all of these objections that were raised, first of all, if you had to follow Mr. Rogers' logic, you would have to chase all over the lot and run down every little fine point of the Selective Service Act. But the cases say this: The record of the registrant, insofar as his questionnaire is concerned, is conclusive. It states in the record his age. As a matter of fact, because of going all over the lot, I haven't had any chance to really check some of these cases out.

There was one case, the record alone was submitted on the failure to report for induction. The Draft Board's record alone was sufficient to uphold a conviction. First of all, the conclusiveness of the questionnaire is the fact that this man was 18 years of age—his birth date was in there—sufficiently to bring him within the period of the year stated in the indictment, the date stated. That record cannot be attacked. That is prima facie evidence.

Secondly, there was ample evidence to the effect—by both Colonel Wilson and Mrs. Taylor—that the induction [159] center is at 1 Washington Street, Providence, and

that the Armed Forces induction center is in fact located in Providence. The directive to him is to report to the Town Hall, Westerly, to proceed to the induction center.

Furthermore, on the objection raised whether or not Mrs. Taylor had the right to order an induction, just quickly looking at a headnote:

> "Defendants charged with failure to report for induction, but who had failed to obey order to proceed to induction center, could not attack validity of induction order in prosecution for failure to report."

Takeguma v. *United States*, a 1946 case, 156 F. 2d 437.

I submit this, your Honor, to this effect: once the records are introduced, they cannot be challenged. The only way they could have been challenged is at the time the questionnaire was returned or the classification was incorrect, to take it through the Draft Board appeal and on to the President of the United States to correct that record. That record is insurmountable proof that this defendant was of induction age. It is proof he was directed, and the records of the Draft Board show he was [160] directed to report to the induction center. It doesn't specify the place, but "induction center." He was ordered to report and given the time and place to proceed to the center. He didn't report there. The records are conclusive of both the Draft Board and the delivery sheet to the effect that this man did not show up at the place he was supposed to show up. And that is all the indictment is alleging. Providence is the induction center. Both Colonel Wilson and Mrs. Taylor testified to that. The record itself shows he is over the age—the records of the Draft Board to the effect he should have reported for a physical exam, and they declared him a delinquent. They could order him directly to an induction station. That is what they did. And then he failed to submit to induction.

There was ample evidence of the fact that this indictment is in good form and the Government at least has made out a prima facie case and proceeded in accordance with the indictment.

The COURT. In passing upon a motion for a judgment of acquittal at the close of the plaintiff's case, it

is the duty of the Court to view the evidence presented by the Government, and all reasonable inferences to be [161] drawn therefrom, in the light most favorable to the Government.

It is clear to the Court, from the evidence admitted here, that there is ample evidence in the files of the Selective Service Board to justify the classification made of this defendant.

The record indicates no appeal from that classification of 1-A was ever made by the defendant, and the classification, therefore, made by the Board is valid.

With respect to the contention that there is a fatal variance between the proof presented and the allegations of the indictment, it seems to the Court that is, as counsel concedes, highly technical. The induction notice, which was forwarded to the defendant, directed him to report to Local Board No. 4, Town Hall, Westerly, Rhode Island, on February 9, 1966, at 6:30 a.m. for forwarding to an Armed Forces induction station.

The evidence itself in this case is uncontradicted that the defendant failed to report to Local Board No. 4, Town Hall, Westerly, Rhode Island, on February 9, 1966, at 6:30 a.m. for forwarding to an Armed Forces induction station.

Further, it is clear that the Armed Forces induction station was located in Providence, Rhode Island.

[162] In my judgment the jury would be warranted in finding that there was a continuing failure on the part of the defendant to comply with the direction of the Local Board No. 4 to report for induction.

Insofar as the contention is raised that the indictment is defective because it is in the conjunctive rather than in the disadjunctive, I think counsel will find, from an examination of the cases, that if the Government were to rest upon an indictment where the allegations were in the disjunctive, that such indictment would be defective because it would be vague and would fail to fairly advise the defendant of the nature of the charge asserted against him. It is customary in proper situations where a statute may be violated by any one or more of several acts, that such acts be alleged in the conjunctive rather than the disjunctive. The Government's proof in such a

case in sufficient if it establishes any one of the acts which amount to a violation of the statute.

I think, further than that, in passing upon this motion, it is clear that the defendant, from the contents of the questionnaire filed by him which constitutes a part of the file of the Selective Service Board, was clearly at the time of the alleged offense between the ages of 18 [163] and 26.

In short, I feel that the instant motion is without merit. The motion for a judgment of acquittal is denied. The defendant's objection to the Court's ruling is noted.

Will you bring in the jury, Mr. Marshal?

(Jury returned at 4:05 p.m.)

* * * *

[165] ALFRED L. QUARTAROLI, Sworn

Direct examination by Mr. Rogers

Q What is your occupation?

A I am a practicing psychiatrist in the State of Rhode Island.

[166] Q Are you a medical doctor specializing in psychiatry?

A Yes, I am an M.D. specializing in psychiatry.

Q How long have you been specializing in psychiatry?

A I have been practicing psychiatry since 1958 in the State of Rhode Island.

The COURT. 1958?

The WITNESS. '58.

Q And you are a licensed physician in Rhode Island?

A I am a licensed physician in Rhode Island.

The COURT. Where is your office, Doctor?

The WITNESS. 1175 Elmwood Avenue, Providence.

Q Now, Doctor, do you know the defendant in this case?

A Yes, I do.

Q How do you know the defendant in this case?

A I know the defendant because I have been treating him since March 22, 1966.

May I just amend that? I did my initial psychiatric evaluation and have been treating him—

The COURT. What is that, please?

The WITNESS. I saw him first on March 22, 1966.

A (Continuing) And since that time I have been treating him approximately on a weekly basis.

Q Doctor, is he still a patient of yours?

A Yes, he is still a patient of mine.

* * * *

[177] Q Doctor, what were the chief complaints of the defendant? If you need to refresh your recollection, feel free to do so.

A Mr. Stiles recalled, when I asked him about his early experiences at home—and speaking about when he was 5, 6, 7, early childhood—that he suffered from a great deal of anxiety with regards to both parents.

The COURT. As to both of his parents?

[178] The WITNESS. Both of his parents, yes.

The COURT. In what respect?

The WITNESS. He recalls his father as being very unpredictable.

The COURT. Very what, please?

The WITNESS. Unpredictable.

A (Continuing) On some occasions he would surprise him with an airplane ride as something pleasant, but this was alternated with very severe punishments in the form of strappings when he misbehaved.

He specifically recalled one significant incident when both he and his father were urinating. He accidentally—that is, Mr. Phillip—Mr. Stiles accidentally urinated on the floor, and his father pushed his face into the urine which was on the floor. He also recalled being forced to eat all foods in spite of the fact that he experienced nausea at times.

With regards to his mother, she urged him to utilize his above-average intelligence in the sense of learning material that was far above that which the average child would know. And then he was compelled to "perform" for others.

I would like to stress that what is important from the psychiatric point of view is that when Mr. Stiles was re-[179] lating these events to me, I picked up strong feelings of resentment.

Q Doctor, again by way of personal history, did you discuss his education, et cetera, with him?

A Yes.

Q And in this particular area what is your knowledge?

A Again Mr. Stiles mentioned or stated, in spite of his above-average intelligence, he had difficulty at various schools, but, more important, at the present time was concerned over his inability to use his natural intellectual endowments.

Q Did you, in taking history with reference to education, et cetera, follow the travel of his education?

A Yes.

Q And what is that?

A I would like to, if I may, state that another important factor in my determining his emotional illness or, I should say causative factors contributing to his emotional illness, was the knowledge that from early childhood—

The COURT. This is what he told you: from early childhood?

The WITNESS. Yes.

A (Continuing)—from early childhood the family had moved about the country, and this necessitated him going [180] to different schools, disrupted any friendships he may have formed, and constantly created new frustrations.

Q Now you say that your patient told you he had gone to a number of schools. Will you give us more information on that, Doctor?

A Though he started school at the age of—

Mr. GEARON. I object. Is he reading that or is he testifying from memory?

The WITNESS. I am reading this.

Mr. GEARON. Object to the reading.

The COURT. You may read it to refresh your recollection to yourself, Doctor, if you need to.

The WITNESS. I may read it verbally?

The COURT. No. Read it to refresh your recollection. Then tell us.

A (Continuing) He started in his earliest school years in New York.

Q At what age, Doctor?

A He started school at the age of 3. He went to kindergarden—went to nursery school, rather.

Q 3?

A 3.

Q Then what?

A Went to kindergarden at the age of 4. He went to [181] school in New York up to the fourth grade. At this point in his life he moved to California and lived with relatives there because his father had suffered a stroke, and his mother had to work to support the family.

He spent the fifth and sixth grades in Pennsylvania, seventh grade in Long Island, New York, eigth grade in Tennessee, ninth and tenth grades in Connecticut, then went back to Tennessee and graduated high school from Oak Ridge High School.

Q And then?

A Then he matriculated at the University of Rhode Island where he had difficulties passing his courses.

The COURT. He had difficulty what?

The WITNESS. Passing his courses.

Q With reference to his difficulty passing his courses, did you have a discussion with him about this?

A Yes.

Q Did he tell you what the difficulty was?

A He did not know what the difficulty was. This was one of his concerns. He knew he had the intelligence. He knew he had the motivation. He wondered why he could not accomplish what should be such an easy task for him.

Q With reference to the University, did you discuss with him his failure at the University? And what did he [182] tell you about that, Doctor?

A Again he was at a loss to explain why he could not force himself, if you will, to concentrate on his studies.

Q Now with referenee to his earlier education, did he tell you anything about school when he was young, in the early grades?

A When he first started school, he recalled he found it very boring because that which was taught he already knew; and, hence, he was indifferent and there was no motivation for him to comply.

Q I see. Now did he tell you, in addition to his background by way of education, his background with reference to treatment, et cetera, and evaluations, et cetera, medically and psychiatrically?

Mr. GEARON. I object to the form of the question, your Honor, the question Mr. Rogers asked: did he tell you about his background, et cetera. What "background" is is not very specific.

The COURT. I think he made it specific. I will allow the question.

Mr. ROGERS. Do you want the question read?

The WITNESS. Please.

(Last question, as above, read by reporter)

A The more important background was a current [183] symptom, namely, depression.

The COURT. Namely, depression?

The WITNESS. Depression.

The COURT. This is—

The WITNESS. This is around this time.

The COURT. March of '66?

The WITNESS. March of '66.

A (Continuing) I was curious as to whether this depression was specifically due to his immediate condition or prior. By "immediate condition," I mean March 22nd.

He stated he had been depressed severe enough to think about suicide even before he received his draft notice.

Q He mentioned suicide. You say he had thought of suicide.

A He had thought about it.

The COURT. He what?

The WITNESS. He had considered it.

Q Now he mentioned depression, Doctor. What else did your patient tell you about depression?

A Well, when he became depressed he had a tendency to withdraw and he just stopped communicating with any of the people he went around with.

Q Did you inquire how long this condition had in fact existed, Doctor?

[184] A Well, he had suffered from depression off and on most of his life. One specific relationship was when

he was attending a prep school with other boys who were in a far superior economic society status, he found himself being unfavorably compared to these boys in his class to the extent that they had more material goods. On vacations they would go to enviable places whereas he came from a lower or a social economic background that did not permit this; and, hence, he experienced feelings of being different than the others.

Q Did your patient give you any other evidence of depression?

A Well, he specifically stated that at times he had tried to allay these depressions by resorting to various drugs.

Q Did he tell you what these drugs were, Doctor?

A These drugs varied. He had taken marijuana, amphetamines, and pep-up pills. He had also experimented with LSD—lysergic acid.

Q Yes, Doctor. You were saying?

A That is all.

Q Did you discuss with your patient the use of these drugs?

A I questioned him as to the judgment in utilizing such potentially dangerous drugs.

Q What did he say, Doctor?

Mr. GEARON. Did you say you asked him for a judgment?

[185] The WITNESS. I questioned him on his judgment in jeopardizing his health by taking such potentially dangerous—

Q And what was his reply, Doctor?

A There was no definite yes or no. His reply was that he was seeking an answer to the many questions and many mixed-up feelings that he had.

Q Did he tell you what some of these mixed-up feelings were, Doctor?

A Well, specifically his feelings towards his mother. He had a fear that she was trying to dominate his life and had tried periodically throughout his life to establish a close relationship which never really existed.

Q Did he tell you why this close relationship didn't exist, Doctor?

A He felt a resentment towards her,—

The COURT. He felt what?

The WITNESS. A resentment towards her.

A (Continuing)—from early childhood. He felt that she had or she was trying to manipulate him as he felt she had manipulated his father. So that there were mixed feelings there: both love and resentment.

Q Did you ever discuss any fantasies, et cetera, with your patient?

[186] A We did discuss some of the fantasies that he had.

Q Would you elucidate as to some of the fantasies that he had?

The COURT. "That he told you he had," you mean.

Q (Continuing)—that he told you he had.

Mr. ROGERS. Excuse me, your Honor.

A He envisioned himself as someday being a doctor, and specifically a psychiatrist himself, and helping others.

Q That is all?

A Yes.

Q Did you ever discuss daydreams with your patient?

A We discussed some daydreams.

Q And what did your patient tell you in this area?

A I don't recall any specific—

Q Do you think your notes might be of some assistance to you, Doctor?

(A pause).

A I just want to clarify that. The fantasies which I discussed there are fantasies which were experienced at a time prior to my discussions with him or my contacts with him.

Q What were these fantasies?

Mr. GEARON. What was that question?

The COURT. Are we talking about fantasies or day-

[187] dreams? Which is it?

Mr. ROGERS. Fantasies, your Honor.

The COURT. Fantasies?

Mr. ROGERS. Yes, your Honor.

A They were fantasies of destruction.

Q Would you elaborate on these, Doctor, if you can?

A Well, he sometimes daydreamed that perhaps the world would all—you know—disintegrate, go up in smoke.

Q Yes? And did you discuss this with him, Doctor?

A That was discussed with him, yes.

Q And what did he say with reference to the world's going up in smoke, Doctor?

A Well, actually there was contradictions. He had feelings of contradictions because on the one hand he disliked or abhorred, hated violence; and, on the other hand, in his fantasies there were these thoughts or daydreams about everything being destroyed. And this caused him concern.

Q Did you discuss his concern for these fantasies with him?

A Yes.

Q And would you advise us in that particular area, Doctor?

A Well, we discussed how the fantasies were a reflection of the resentment and the hostility feelings which came about due to his—or as a result of his early experiences with both parents and subsequent unpleasant ex-
[188] periences in the school situation.

Mr. GEARON. May I have that answer again, please?

The COURT. Certainly.

(Last answer, as above, read by reporter)

Q Yes, Doctor?

A That is it.

Q Now did you discuss with him his thinking and fantasy? If you need to refer to your notes, I am sure the Judge would let you.

A Well, I believe the important thing that we brought out was how these fantasies and this daydreaming were very abortive or were non-productive, and so much energies were devoted to this that this was one of the causal facts, one of the reasons why he was unable to concentrate on his studies.

Q Did you have any discussion with him about the desire to excel?

A Yes. This again was surrounded by mixed feelings. On the one hand he wished to excel.

The COURT. Wished to what?

The WITNESS. To excel, be better, to excel.

A (Continuing) On the other hand, a strong need to excel caused him to stop doing anything if he felt he would not be the top or achieve it in the most perfect way possible.

[189] Q Did you discuss with him his accomplishments?

A Yes, and again he was depressed. He was unsatisfied over the fact that he had really had difficulty in acquiring any form of success in the academic life.

Q Did you discuss any self-doubts, et cetera, with your patient?

A Yes, the self-doubts were discussed in regard to his feelings of being a man. We discussed the fact that he had always felt quite shy, quite timid, as far as girls were concerned; and that his relationships with girls was always unsatisfactory.

Q Did you discuss responsiveness to others with your patient?

A This was another area of difficulty in that there was a basic mistrust. In fact, perhaps—not perhaps—an important fact is his relationship towards me at first was somewhat guarded, and he posed many questions to test how my reactions—challenged my ability to help him, and was able to state that he wanted to really get at the bottom of his problems and did not want to play games with me as he felt he had in his past professional contacts.

Q Now you say that he challenged you. What do you mean by that, Doctor?

A When I would make a statement or interpret some [190] of his feelings with regard to his past, he would always ask—not always—but he would question me and ask why, what was the basis of my interpretation, what was the basis of my statement.

Q Now you say that he would question your interpretation. Would you explain that further, Doctor?

A Well, if I stated, for instance, that part of his difficulty in obeying the law was the fact that he was continually as a child, in his early childhood, made and

forced to do things that he felt were unreasonable, he would ask me on what—why do I say that.

What I would like to emphasize is that his questioning me was more than just getting factual information. He was actually testing me out to see whether I would respond, as perhaps others had responded to him, with hostility, with rejection of him.

* * * *

[194] Q Did you discuss his conduct and things that he did with him?

A Yes.

Q Did he characterize his conduct for you?

A Well, he mentioned that he found it difficult to lead any structured life, namely, he found it difficult to discipline himself as far as studies were concerned.

Q You mentioned structured life.

A By structured life I mean attending class, studying assignments, submitting oneself to examinations.

Q Did you discuss with him military service?

A Yes.

Q And in this particular area, Doctor, most important, what did your patient feel?

A He was tremendously frightened—

[195] The COURT. What is that?

The WITNESS. He was tremendously frightened.

The COURT. Frightened?

The WITNESS. Frightened.

A (Continuing)—about the whole aspects of being forced to live a structured—

The COURT. Being what?

The WITNESS. Being forced to live a structured,—

A (Continuing)—existence as he anticipated would be required.

The COURT. A structured existence?

The WITNESS. In simple terms, being told "You can do this and you can't do this. Go to bed at this time; get up at this time." His life at this time was characterized by no regularity. By that I mean he did not go to bed at any specific time or get up at a certain time. There was a very loose way of living.

Q What else did he tell you about military service?

A Well, he felt that he could never live—you know—endure the demands that would be made upon him.

Q Did you discuss with him his failure to report for induction, Doctor?

A Yes.

Q What was the discussion there?

[196] A There again—

Q In detail.

A Well, that was one of the reasons why he came to see me. However, he used a defense mechanism, and intellectual—

The COURT. He used what?

The WITNESS. A defense mechanism.

The COURT. He used a defense mechanism.

A (Continuing)—by denying, that is, denying on the one hand the importance and severity of not following through what he was supposed to do.

The COURT. Denying what?

The WITNESS. Denying the importance, the severity, the gravity; denying the gravity and severity.

The COURT. Of what?

The WITNESS. Of failing to comply to the requests made for induction.

The COURT. Comply with the request to report for induction?

The WITNESS. Yes.

A (Continuing) This alternated with a feeling that something might happen about it.

The WITNESS. I would like to elaborate on this.

MR. ROGERS. I wish you would, Doctor.

A (Continuing) Yes, he specifically stated he had re-
[197] ceived several notices, and on one occasion he had made up his mind to report. He had gone through considerable trouble obtaining a car the night before so that he would have ample transportation to get to the place where he was going to be examined.

And the night before, he did something that he generally does not do, or did not do, namely, became intoxicated and overslept the next morning and never materialized—never arrived at his place of destination.

Q Did he say what effect this had on him?

A Again it was mixed feelings. On the one hand, he was concerned about his not—his failure to report. On the other hand, there was the fear of what would be done about it.

Q Did you discuss with him his failure to report for prior physical examinations, Doctor?

A Well, while this was discussed, there were other—there was other matter that was discussed of equal importance, namely, the matter of drugs and his failure to discipline himself in any area of his life.

Q You say you discussed his failure to discipline him in any area of his life.

A Discipline himself.

Q Himself.

[198] A Specifically with his academic life.

Q With reference to drugs, Doctor, what was the material here?

A We had discussed the importance of the severity of what could happen if he allowed himself to continue along this vein. He was at no time ever an addict. He had just experimented.

Q What did he say about this? Was he concerned about it? Did he express concern?

A Again he had mixed feelings about this. On the one hand, there was an attempt to justify and to rationalize this experimentation. On the other hand, there was an intellectual—an agreement that this was a serious thing to be concerned about.

Q Did you discuss with him whether or not he understood the importance of his actions and the effect of his actions?

A Yes. And again the same thing resulted, namely, the mixed feelings. I would say that part of him felt that this was severe. The other part tended to belittle it.

Q If you could explain that a little further, Doctor, I would appreciate it.

A Well, with regards to the ingestion of drugs, on the one hand, his intelligence was certainly sufficient to let him realize the potential danger. On the other hand, [199] his emotional self rationalized that perhaps he could feel better, could find some solutions to his problems through this means.

Q Did you discuss with him, Doctor, whether or not—

Mr. ROGERS. Strike that.

Q Now what particular drugs are you talking about at this time, Doctor?

A Specifically?

Q Yes.

A LSD.

Q Would you tell us again what LSD is, Doctor?

A LSD is a very potent drug which can induce states of hallucinations, distorted sensations, states which our language is unable to express since there are—the states of being that are experienced by those who ingest this substance is something so new and so strange that there are not words in our vocabulary to express what takes place.

Q You say he told you he experimented with this.

A Yes.

Q And you mentioned hallucinations. Did you discuss any hallucinations or anything with him?

A We discussed the different subjective experiences that he had while he was under the influence of this particular drug.

[200] Q Did he tell you whether or not he knew this was wrong to do or it wasn't wrong?

A Again it was a sort of—a callous attitude, an attempt to rationalize this. He stated on various times that he felt that this would give him more insight into his personality.

Q Did he tell you he knew it was wrong or he shouldn't do it?

A Again at times he intellectually, as an intellectual fact, stated that there is a potential danger, but emotionally felt that this was—that the ingestion of such a drug was justifiable in an attempt to solve his problems, to get to know himself better.

Q You say he told you he was taking these things to solve his problems. Did you discuss with him—to conform his conduct to normalcy, so to speak?

Mr. GEARON. May I have that question again?

(Last question, as above, read by reporter)

Q (Continuing) What did he have to say in this area, Doctor?

A Well, the purpose behind this drug ingestion was to know himself better so that he could conform more to what he felt he should do in all areas of his life.

Q Did he discuss with you extended trips outside the country, for example?

A Yes, he did mention that prior to seeing me he had [201] spent a week or so in Mexico.

Q Did he assign any reason for going to Mexico?

A He was trying to find himself, trying to understand himself, and felt that going away from our country, going to Mexico, he would have a chance to reflect, meditate, and think about himself and many philosophical questions in general.

Q You say that his evaluation of you at the outset was guarded. Is that right?

A I say that the relationship was guarded.

Q Is "guarded" no more than a medical term for apprehensive?

A More than apprehensive. There was a question of whether he should have faith in me and trust in me.

Q Did this remain?

A No, this—the relationship became more one of trust, more one of understanding, and one characterized by more frankness on his behalf.

Q Did you discuss with him again specifically his failure to report for military service?

A Yes, we did.

Q Did you discuss the wrongfulness of it?

A It was alluded to.

Q In this particular area, Doctor, what was the—

A The answer was that he knew intellectually—

[202] The COURT. What is that?

The WITNESS. He knew intellectually—

The COURT. The answer was—

The WITNESS. —He knew intellectually.

A (Continuing)—that he was failing to comply to the law, but emotionally was unable to get himself to do anything about it.

The COURT. That is what he told you?

The WITNESS. Yes, sir.

Q Now you say, "emotionally unable to get himself to do anything about it."

A Right.

Q Doctor, by that what do you mean?

A I mean that—

The COURT. Are those the words he used to you?

Mr. ROGERS. I hope so, your Honor.

The COURT. He said emotionally he was unable to do anything about it.

The WITNESS. Emotionally.

A (Continuing) Human behavior is characterized not only by what we know, but, more specifically, by how we feel. Many times our feelings are not aware to us—are not aware to our own consciousness and as a result we find ourselves doing things that we are unable to explain [203] intellectually.

Many of us have had this experience, stating, "I did it but I don't know why." In other words, there was cognitive intellectual knowledge that did do this, did perform an act, or did not perform an act, but emotionally did it for an unknown reason: I would say an unconscious reason.

Q Could you elaborate on the "emotional"?

A Emotional?

Q Yes.

A In this specific situation Mr. Stiles had such a patent way of reacting to anything that was imposed upon him, that his emotional self continually caused him to ignore something which is obviously very important, very severe. In other words, intellectually he knew that failure to report for his physical examination was a matter of serious importance. His emotional state was such at that time that he himself could not utilize what we commonly know as will power to do what he ought to have done.

* * * *

[211] Q In addition to earning a living and managing a family, did he discuss any other functions with reference to manhood?

A He was quite concerned over the fact that he had had some homosexual contacts or experiences. Further

elaboration and discussion of these proved in my opinion that he was not a homosexual, but merely had doubts about his sexual role.

* * * *

[220] Q With reference to his depression, did he advise [221] you that he was depressed all the way along his whole life?

A My interpretation was that he was depressed as far back as he can remember. His verbal expression was that he recalled being unhappy, frightened, fearful, lacking the warm close contacts to parents that he felt other children had.

Q Did this persist?

A Yes.

Q Did it persist up 'til when he was expelled from preparatory school?

A Yes.

Q What was his reaction to being expelled from preparatory school, Doctor?

A This produced aggravated feelings of depression, inadequacy, self-doubts.

Q Can you aggravate depression, Doctor?

A Yes.

Q How is depression aggravated?

A The state of depression is aggravated by repeated failures, by repeated inability to achieve what one personally thinks one should achieve to be considered successful.

Q Was your patient one with aggravated depression?

A Yes.

Q Was your patient one with continued and prolonged depression?

[222] A Yes.

Q Was your patient one that sought the use of marihuana for relief of depression?

A That was part of the picture, yes.

Q Part of the picture. And this was prolonged?

A Yes.

Mr. GEARON. Objection, your Honor. Characterization of "prolonged." How long?

The COURT. I will sustain the objection to the form of the question.

Q Was this prolonged?

Mr. GEARON. Objection again. He used the word, "prolonged." I think it can be specifically pointed out. The doctor said he started treating him in March 1966, and this is less than a year later at the present time.

Q Did your patient tell you how long he had been resorting to the use of marihuana for the relief of depression?

A It was not stated specifically, but approximately several years prior to my seeing him.

* * * * *

[223] Q You began to see him when?

A March 1966.

Q Did you ever discuss with him his not reporting for military physical examinations, as compared to the other boys?

A Yes.

Q What was the discussion here, Doctor?

A He knew that this was a serious thing.

The COURT. He what?

The WITNESS. He knew that this was a serious thing, his not reporting.

A (Continuing) He felt he could not compel himself to do what should be done.

Q Did he discuss with you the failure to report on more than one occasion for physical evaluation?

A Right.

Q He did. With reference to his failure to report for induction, as compared to the other boys, so to speak?

Mr. GEARON. I am going to object to the question. It pertains to two different subjects. One is physical examination; the other is induction.

The COURT. It is proper inquiry. I will allow it.

Mr. ROGERS. Do you want the question read back, Doctor?

[224] The WITNESS. No.

A No, there was no specific comparisons made between himself and others. He was mainly interested in his own mixed-up feelings.

Q What do you mean by "mixed-up feelings," Doctor?
A I mean that he knew this—
The COURT. He what?
A (Continuing) He knew that failure to comply was of a serious nature, but his feelings were such that he could not do what he ought to have done about it.

* * * *

[225] Q Doctor, as a result of your taking a history from this defendant, your past clinical evaluation of him, examination and treatment of him, did you make a diagnosis?
A I did not make a diagnosis at first. I did feel strongly that at that time—that is, I am speaking of my March session with him and subsequent sessions with [226] him—that he was a boy suffering from a mental disorder, characterized by a lifelong pattern of inability to do what was asked of him, required of him, characterized by these episodes of depression, characterized by behavior which he knew intellectually would bring him more discomfort, more emotional pain.
Q This was your diagnosis. Could you tell me, Doctor, what your diagnosis was predicated upon?
A My diagnosis was predicated upon my—principally upon my contacts with the boy, the content of the material he told me about, the history, historical matter that he told me about, and the historical material which I obtained.
Mr. GEARON. Objection, your Honor.
The COURT. What is your objection?
Mr. GEARON. Predicating some of his conclusions upon inadmissible testimony, like for instance, on the evaluations he obtained.
The COURT. I appreciate that, but he says he did that so we will let it stand.
Q Now, Doctor, having given your diagnosis, would you explain your diagnosis?
A By my diagnosis I mean to imply—
The COURT. You mean to what?
The WITNESS. I mean to imply.
[227] By "imply" you mean state, Doctor?
A I mean to state that Phillip Stiles was suffering from a mental disorder which was of such severe nature

that it stood in the way of his functioning as a normal boy would at that time.

Q Now would you characterize your diagnosis as emotional instability, for example?

A Yes. I would state that he was for a specific classical diagnosis, which I personally do not approve of because it means trying to pigeonhole an individual into a generalized statement—however, for the classical descriptive purposes I would diagnose him as suffering from emotional instability or having an emotional unstable personality,—

The COURT. Emotional instability?

The WITNESS. Or an emotional unstable personality.

The COURT. Emotional—

The WITNESS. —unstable personality.

A (Continuing)—which is classified under the heading of personality disorders in the official nomenclature book of mental disorders issued by the American Psychiatric Association.

Q Is there such a manual as a diagnostic and statistical manual of mental disorders published by the American Psychiatric Association, Doctor?

[228] A Yes, there is.

Q Would you recognize a volume of the same?

A That is the volume that you have in your hands.

Q Minus cover, unfortunately.

A Yes.

Q You recognize that as being a working manual used in your trade?

Mr. GEARON. I am going to object to the introduction of this document or reference to this document.

The COURT. I think your objection is well taken. Sustained.

Q Doctor, you say you don't like to use the word, "diagnosis," because it means pigeonhole.

A I don't like to place labels on individuals because Mr. Stiles, as every patient who is suffering from a psychiatric illness, is suffering from a highly intense, personal, individual type of illness and it would be literally impossible to list all the different varying types of conditions that exist, since each person is an individual with his own unique individual problems.

Q Therefore, you would rather not use this manual.
A I would rather not use that manual.
Mr. ROGERS. You would rather not. Therefore, I will get rid of it.
[229] Q Now, Doctor, you have given your diagnosis, and as a result of your knowledge of this particular case, the history that you have taken, and many other steps you have taken to familiarize yourself, did you form an opinion, Doctor, as to whether or not the defendant did in fact have a so-called mental disease or defect at the time of the examination?
Mr. GEARON. Objection, your Honor. Object to the form of the hypothetical question. I object to the form of the hypothetical question. It is very vague. It doesn't cover the ground we have been over this morning at all.
The COURT. May I have the question?

(Last question, as above, read by reporter)

The COURT. Perhaps it is somewhat vague, Mr. Rogers. For instance, you have incorporated there: "many other steps you have taken." Suppose you reframe the question.
Mr. ROGERS. Yes, your Honor.
Q Doctor, would you advise the Court and jury as to what steps you have in fact taken to familiarize yourself with your patient and his condition?
A I examined him psychiatrically by repeated personal interviews. I obtained information elsewhere, from the previous psychiatric contacts he had.
[230] Mr. GEARON. Objection; move the answer be stricken, your Honor.
The COURT. The difficulty is, Mr. Gearon, the witness has repeated that several times. How much reliance he may have placed upon what somewhat else may have reported to him, I think, goes to the weight of his opinion. But, nonetheless, I think those are proper matters for cross-examination when the time comes.
Mr. ROGERS. Might I have the doctor's answer read back so far, please?

(Incomplete last answer, as above, read by reporter)

Q Yes, Doctor. Continue. The question was: what have you done to familiarize yourself?

A This is in essence what I have done.

Q And on the basis of this did you form any opinions?

A On the basis of this?

Q Yes.

A I did form an opinion that this man, Mr. Phillip Stiles, is suffering from a mental disorder.

Q Now, in your opinion, Doctor, was the defendant, Phillip Stiles, suffering from a mental disease at the time of your examination?

Mr. GEARON. I couldn't hear Mr. Rogers' question. [231] Therefore I don't know if it is objectionable or not.

(Last question, as above, read by reporter)

A Yes, he was.

Q In your opinion, Doctor, does the defendant, Phillip Stiles, suffer from a mental disease that could cause the defendant to have a lack of substantial capacity to conform his conduct to the requirements of the law?

Mr. GEARON. Objection, your Honor. The test that is being applied—

The COURT. I will allow the question.

A In my opinion, definitely, yes. His condition, his mental status, his mental illness, mental disorder, was such that it impeded his proper functioning, correct functioning, healthy functioning, in many areas of his life; the two principal ones being his academic life and his failure to comply with the law with regards to draft notice.

Q Doctor, in your opinion did the defendant, Phillip Stiles, lack substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law?

A I cannot answer that.

The COURT. You cannot answer it?

The WITNESS. No, there is two questions in one. If you would strike out the "or."

[232] Q All right; we are back to the disjunctive and conjunctive. Rephrased: Doctor, in your opinion did the defendant have a mental defect or disease in existence

that would cause him to lack substantial capacity to conform his conduct to the requirements of the law?

A Yes.

Q Would you explain that answer?

A Because of his mental condition, because of his—more specifically, because of his emotional condition he was unable to comply with the requirements of the law. He was unable to bring himself to comply with the physical examination. He was unable to do anything about this once he had failed.

The COURT. Once what?

The WITNESS. He was unable to rectify, to do anything about this, because of emotional reasons in spite of the intellectual knowledge that this was a serious offense.

Q Doctor, do you have an opinion as to whether this condition is a chronic condition?

A By "chronic,"—

Mr. GEARON. Objection, your Honor, to the question.

The COURT. What is the objection?

Mr. GEARON. Chronic condition as of now or what was his mental condition prior to February 9, 1966?

[233] Mr. ROGERS. I believe the question calls for a yes or no answer.

The COURT. Why go into it if it isn't relevant? We are concerned with what this man's mental condition was immediately preceding February 9, 1966, are we not?

Mr. ROGERS. Yes, your Honor.

The COURT. And on February 9, 1966.

Mr. ROGERS. Yes, your Honor. I was trying to lay a foundation. Might I have the question read back?

(Last question, as above, read by reporter)

The COURT. What is meant, first of all, by a chronic condition?

The WITNESS. By a chronic condition is commonly understood a condition of long standing nature.

Q This is your definition of "chronic"?

A This is my definition and the accepted medical definition of a chronic illness.

Q Doctor, with reference to your particular patient's illness, as you have diagnosed it, is it a chronic condition? Did you diagnose it as being chronic?

Mr. GEARON. Objection, your Honor.

The COURT. What is your objection?

Mr. GEARON. I don't see the relevancy of: is it chronic. He might have had that condition any time after [234] February 9, 1966. I don't see the relevancy as to the indictment.

The COURT. I believe a moment ago the doctor said in his opinion a chronic condition was one of long standing.

Is that what you said?

The WITNESS. That is correct, your Honor.

Mr. GEARON. But he doesn't say when. I will accept the medical definition of the word, "chronic," your Honor, but as it relates to this defendant, not as a general description.

The COURT. That is a preliminary question. I will allow it.

Mr. ROGERS. Might we have the question?

(Last question, as above, read by reporter)

A Yes, I did.

Q When you diagnosed your patient's condition as being chronic, what definition of the word, "chronic," did you apply?

A A disease of long standing nature; specifically, one in his case that he had his condition for over several years prior to my contacts with him.

Q Over several years prior to your contact. Doctor, do you have an opinion as to whether or not your diagnosis of your patient applied on February 9, 1966, the date of the offense?

[235] The WITNESS. I am sorry. Would you repeat it? I lost track.

(Last question, as above, read by reporter)

A Yes, it applied. By that I mean it would be the same diagnosis.

Q Would you explain your answer, Doctor?

A By that I mean that if I had seen Mr. Stiles on that very date or the day before, that I would have reached the same conclusions as to his emotional illness.

Mr. CORCORAN (Juror No. 4): Your Honor, are we allowed to ask a question?

The COURT. Unfortunately, no.

Mr. ROGERS. May it please the Court, I wish I knew what the question were. For the record, might I have the name of the juror identified as being the person asking if he could ask a question, your Honor?

The COURT. It is Mr. Corcoran, Juror No. 4.

Mr. ROGERS. Might I request of the Court that I have the doctor's answer to the question, "What was the diagnosis," read back, please?

The COURT. Certainly.

(Previous answer read by reporter as follows:

"I did not make a diagnosis at first. I did feel [236] strongly that at that time—that is, I am speaking of my March session with him and subsequent sessions with him—that he was a boy suffering from a mental disorder, characterized by a lifelong pattern of inability to do what was asked of him, required of him, characterized by these episodes of depression, characterized by behavior which he knew intellectually would bring him more discomfort, more emotional pain.")

Q Doctor, I have asked you if this diagnosis would have also applied on February 9, 1966, and your answer to that was in the affirmative.

A Yes.

Q How, Doctor, could it have applied in your opinion?

Mr. GEARON. Objection, your Honor: how could it have applied. He has to be fore specific than that. That is a question that is not relevant to the issue.

The COURT. I don't quite understand the question myself. The witness has already said in his opinion this was a chronic condition which existed on February 9, 1966; that if he had examined him a day or two before, he would have expected to find the same condition.

Is that what you are getting at?

* * * *

[237] *Cross-examination by Mr. Gearon*

* * * *

[239] Q You have never testified that he has a pathological or diseased state.

A I said he was suffering from a mental disorder.

Q Is it a personality disorder?

[240] A It is a personality disorder.

Q It is a personality disorder; it is not pathological.

A It is pathological. By "pathological" I mean sick, not normal.

Q In the generally accepted medical sense, the term, "pathological," means sick?

A Sick, diseased.

Q But it is disease caused by some malfuction of the body.

A It is disease caused by some malfunction of the psyche.

Q You are insisting that the term, pathological defect, is not the same as it is in all the clinical definitions. Is that correct?

A No. My use of the word, "pathological," is the one that is used in all medical and psychiatric textbooks; namely, diseased, abnormal, incorrect functioning.

Q When you studied pathology, Doctor, you studied it in the sense of diseases to the body itself; in other words, malfunctions of the body were created by a disease of some kind; in other words, a disorder that was not there. If it was not there, it would not be a pathological disorder. Is that correct?

The WITNESS. I am sorry; I don't understand the question.

Q Let's put it this way: A pathological disorder is [241] something that is not common to the human body. Isn't that correct?

A Yes, I would go along with that.

Q Does he have brain damage, pathologically speaking?

A Organic brain damage?

Q Organic brain damage.

A No, he does not have organic brain damage.

Q Then he does not have a disease of the brain. Is that correct?

A He does not have a disease of the brain—organic structures.

Q Not having a disease of any type of the brain, there is nothing that would cause him to act in a manner wherein there would be brain damage. Do you follow me?

A No, I do not follow you.

Q I don't follow myself. In other words, he doesn't have a disorder, as you have defined it, which was brought on by organic damage to the brain.

A He does have a disorder. The disorder he has—he has a mental disorder. The disorder he has is not linked with any physical elements of the human body. But I am sure no one would argue against the fact that we are made up of more than just a physical entity; that we have spiritual qualities; we have emotional qualities, which all go into our behavior.

[242] The fact is that the majority of people, who are classified, according to the book which we use for classification purposes, do not have any demonstrable organic lesions. You can take their brains, slice them up, and you will find nothing wrong pathologically, organically, but they are very sick.

Mr. GEARON. I move it be stricken. I asked in relation to this person here.

Mr. ROGERS. Before the answer is stricken I ask the question be read and the answer, as given. It is responsive.

The COURT. I will allow it to stand.

* * * *

[245] Q What is this mental disorder he is supposed to be suffering from? Can you clinically categorize it?

A If you force me to. Yes, I would say he is suffering from a personality disorder, an emotionally unstable personality, which is characterized by handling unpleasant situations in such a way that they do more damage than what you attempt to resolve, and is in most cases linked up with problems in handling hostile feelings, aggressive feelings.

Q You could also interchange the word, "hostility," with running away from reality. Is that correct?

A No, you cannot interchange the two. There is a difference between hostility and running away from unpleasant reality. Hostility implies anger. Running away from reality implies or means avoiding a situation.

Q We still haven't got an answer as to what type of mental disorder he is supposed to be suffering from.

A He is suffering from an emotionally unstable personality disorder, which is an approved diagnostic entity in the book on mental disorders put out by the American Psychiatric Association.

Q Did I see you consulting this before we resumed at 2 o'clock? (indicating)

[246] A That is correct.

Q Does that classification come within what is in that book?

A That is correct.

Q This man doesn't—he appreciates the wrongfulness of his conduct, doesn't he?

A He intellectually appreciates the wrongfulness? Yes, he does.

Q And he knows what it is.

A He intellectually knows, yes.

Q And he knows whether he is doing correct, morally, or incorrect?

A He knows—correct.

Q But you testified he cannot will himself or he lacks the will power to do what we know ought to be done. Isn't that correct?

A In certain circumstances, yes.

Q Is that a mental defect?

A It is a mental defect.

Q Or is it a moral defect?

A A moral defect would take us into the realm of religion. I am not a clergyman; I am a psychiatrist.

* * * *

[254] Q He has what you characterize as a mental disorder—rather, he has a personality disorder which you clinically characterize as a mental disorder. Is that correct?

A That is correct. It is classifiable, as it is a mental disorder. It is further classified as a personality disorder, further broken down as an emotionally unstable personality.

Q And you characterize that as a mental disorder. Emotionally unstable personality is a mental disorder.

A Yes.

[255] Q Or disease or defect.

A Yes. May I state that the basis for my statement is on the classification nomenclature. Our very book on classification is entitled "Mental Disorders."

Q But it doesn't prohibit him from distinguishing between right and wrong.

A That is correct.

Q And he is not subject to compulsions.

A As a predominant feature, no.

Q Well, is he subject to compulsions at all?

A It would depend on what you mean by—you see, compulsions can be so predominant that we have another disease entity called an obsessive compulsive neurosis.

Q I am saying: is he subject to compulsions?

A No.

* * * *

[282] GRACE ELLEN STILES, Sworn

Direct examination by Mr. Rogers

Q Mr. Stiles, you know the defendant in this case.

A Yes, sir.

Q Is there any relationship between you and the defendant?

A He is my son, sir.

Q He is your son. Mrs. Stiles, where do you live?

A At 10 Fortin Road, Kingston.

Q That is in Rhode Island?

A That is in Rhode Island, yes.

Q Were you living there, at 10 Fortin Road, Kingston, Rhode Island, on January 25, 1966?

A Yes.

Q Did you ever receive any communication from anywhere for your son at that address?

A Yes.

Q More specifically, did you ever receive any registered mail at that address, addressed to your son, Phillip Stiles?

A Yes.

Q I ask you—

A (Continuing) We maintain a post office box.

The COURT. A little louder, please.

The WITNESS. We maintain a post office box for convenience, but it is the same address.

[283] The COURT. It is the same address.

Q Referring you to United States Exhibit No. 2, Mrs. Stiles, with a receipt appended, do you recognize this signature on the second line?

A Yes, sir; that is my signature.

Q Would you read it, please?

A It says: "Grace Ellen Stiles, 10 Fortin Road, Kingston, Rhode Island."

Q Would you read the date delivered, Mrs. Stiles?

A "1/25/66."

Q Did you in fact sign this receipt?

A Yes, sir.

Q Have you ever seen Government's Exhibit No. 2 before?

A This paper?

Q Yes.

A I don't believe so, sir, because I did not open the thing that I signed for.

The COURT. Can't hear you, Madam.

The WITNESS. I don't believe that I have ever seen the paper because I did not open the envelope that I signed for. I received the envelope, signed for its receipt. I did not open it.

Q Do you recall January 25, 1966?

A Yes, I do.

[284] Q At that time was the defendant in this case, your son, Phillip J. Stiles, at 10 Fortin Road in Kingston?

A That was his residence but he had gone away for a holiday, a visit with some friends.

The COURT. He had what?

The WITNESS. He was not at home. He had gone for a visit with some friends.

The COURT. For a visit with some friends?

The WITNESS. Yes, sir.

Q And, Mrs. Stiles, do you know of your own knowledge where he went?

A I wasn't with him. He said that he was going to visit some friends in New York City. I cannot give you the address. And he went from there on to visit some friends in other places. And before he did come back he had visited Mexico. But I believe at that time he must have been in New York City, according to what I understood.

Q Can you recall approximately when he left for this visit?

A It must have been about the middle of January.

Q About the middle of January?

A Yes.

Q By the middle, do you mean January 15th?

A Well, the 15th. It was before the 25th.

Q Can you recall approximately when your son re-
[285] turned to 10 Fortin Road, Kingston?

A His birthday is March 23rd, and it was shortly before that. I would say between the 5th and the 20th of March sometime.

Q Was your son at 10 Fortin Road at any time between, say, January 15, 1966, and February 9, 1966? Your answer?

A No.

Q You say that he returned home after February 9, 1966.

A Yes.

Q And again when do you think he returned?

A It was in March.

Mr. GEARON. Object to the form of the question: when do you think he returned.

The COURT. It is repetition. She has already said her best recollection was between the 5th and 20th of March.

Q Was it closer to the 20th, Mrs. Stiles, of March?

A My best guess would be about the 15th of March.

Q About the 15th of March. And at that time what did you do with mail that you had collected for him?

A I had collected it in a drawer in his room, and I gave it to him; told him where it was and gave it to him.

* * * *

[286] Q Now, in addition to your visting with your son at Dr. Quartaroli's office, did you ever visit with your son to any other doctor?

Mr. GEARON. Objection, your Honor.

The COURT. What is your objection?

Mr. GEARON. Whatever she did would be hearsay in regard to this particular indictment—prior to this.

The COURT. No, I don't think so. I wouldn't regard it as hearsay. If it is within her personal knowledge, I will permit the inquiry. I assume counsel intends to tie this up some way or other.

Mr. ROGERS. Your Honor, might I have the question read, please?

(Last question, as above, read by reporter)

[287] A Yes.

Q Would you tell the Court who the doctors were—doctor or doctors—and approximately when you visited?

A Well, there were several times and several doctors. Shall I take them in order of their—

Q If you would try to establish the best chronological pattern that you could.

A At about the time of his sixth birthday he had had a great deal of sleeplessness, a great deal of overactivity—a great deal of hyperactivity. He had also had his first encounter with a teacher who screamed a great deal—

The COURT. Wait a minute. You are not to tell us the circumstances. The simple question was: who was the doctor and when.

A (Continuing) It was the Child Guidance Clinic of Columbia University of New York City. That was the first time.

Q Yes, Madam?

A The second time, I believe, was Dr. Achley in Hartford.

Q Dr.—
A —Achley in Hartford.
The COURT. Hartford?
The WITNESS. Hartford, Connecticut; yes, sir.
Q Is that Dr. John Achley of Hartford, Connecticut?
A I believe his first name is John, yes.
[288] Q Do you recall approximately when you went to visit Dr. John Achley?
A About the time that Phillip was 13.
Q About the time he was 13. Yes, Ma'am?
A Approximately 1958-ish—'57 or '58.
Q Yes, Ma'am?
A And the next one was a Dr. Buchman, also of Hartford.
Mr. ROGERS. I believe it is B-u-c-h-m-a-n. Is that correct, Mrs. Stiles?
The WITNESS. That is approximately, yes. We could identify him in Hartford in the phone book with that spelling.

* * * *

[291] Q Do you know what type doctor each of these doctors were?
A Well, in Dr. Achley's office there was a certificate that he was a psychiatrist. In Dr. Buchman's office was a similar certificate that he was a psychiatrist. We were referred to them as practicing in these fields. This is the basis of knowledge upon which I would base the judgment that they were psychiatrists.
Q Do you know, of your own knowledge, that they treated your son?
A Yes.

* * * *

[292] Q Do you know approximately how many visits were made to each doctor?
A Well, I took him—
The COURT. We are not interested. What could be the basis of her knowledge, Mr. Rogers? I don't mean to shut you off, but the rules of evidence provide certain standards here. If the lady didn't go to the doctor with her son, how does she know how many visits were made? [293] It would be purely hearsay, wouldn't it?

Mr. ROGERS. Immediately prior to interruption, the witness had testified she had gone with the defendant.

The COURT. Under oath if she wants to tell us she went a specific number of times to each doctor, I will permit her to do so.

Mr. ROGERS. Yes, your Honor. That is exactly what I am trying to do.

Might I have the last question, please?

(Last question and incomplete answer, as above, read by reporter)

The COURT. Well, I what?

(Last incomplete answer, as above, reread by reporter)

A (Continuing) As a child of 6 I took him to the Columbia Clinic six times. We made six round trips, and I did go. You don't send a 6-year-old child.

The COURT. I wouldn't think so.

A (Continuing) I saw Dr. Achley twice: once at the school where he came, and he asked me to come for a conference, and I did go; and another time when I sought Dr. Achley out. We still were having difficulties, and I went to Lakeville—Lakeview—Lakeville, I believe, Connecticut, where he then was living and practicing. So I per-
[294] sonally went with Phillip and talked with Dr. Achley twice.

There were some months in between, during which I didn't see him.

* * * *

[298] Q What was your customary habit with reference to delivery of mail addressed to your son?

A I kept it in a place that we had agreed upon, in a
[299] drawer. There it was. When he came in, I gave it to him. This was the practice between us.

Q Was this letter treated in exactly the same manner?

A Exactly in the same way as all.

Q Did your son say anything when you gave him this letter, the Government's exhibit that I showed you?

A No.

Q He did not. Did you discuss with him the contents of the letter?

A No.

* * * *

[311] Q I see. So then he has been away from home quite a bit, hasn't he, Mrs. Stiles?

A But never without a room.

Q For him?

A Yes, he wouldn't sleep in it but it was there. And I never chased him away. I never told him he couldn't come home.

Q But, Mrs. Stiles, your son did leave home and do quite a bit of traveling. Was it predictable or unpre-
[312] dictable: his coming and going?

A It was highly unpredictable.

Q Highly unpredictable?

A Yes.

Q Were his absences normally explained or ignored?

A Even if I asked him, he would not tell me.

Q He wouldn't tell you?

A Frequently—well, he never was rude in the sense that he would say, "None of your business." But it was quiet and a kind of—I think one time he said, "Well, I don't ask you where you go." It was not impact, but what I tried to do on my side was be as helpful in what I was told by various psychiatrists was his trouble, and to try to maintain this sort of welcome that he could come home to, if just he would.

Q And repeatedly he would stay away. Right?

A Yes.

* * * *

[322] Q Two very quick questions. Did you receive any phone calls from your son while he was away at any time around the time that that letter, that is Government's exhibit, came?

A He called me from New York one time and did explain to me that air travel regulation that had just come in. But that was before that letter came.

Q The letter had not arrived?

A That is right.

Q Did you receive any letters from him around that time?

A I got postal cards mostly.

The COURT. Around that time? You mean when—January, February, March of '66?

Mr. ROGERS. Be more specific, your Honor, at approximately the time that that letter came.

The COURT. You are referring to the notice to report for induction. That was January 24, 1966, was it not?

Mr. ROGERS. Yes, your Honor.

A (Continuing) Well, I got a postal card from New York and I got a postal card from Knoxville Air Station when he left to Mexico, and I got several postal cards from places that he was visiting.

Mr. ROGERS. Nothing further. Thank you, Mrs. Stiles.

* * * *

[323] MORTON SILVERMAN, Sworn

Direct examination by Mr. Rogers

Q Your name is Morton Silverman?

A Yes, sir.

Q What is your occupation?

A I am a clinical psychologist.

* * * *

[325] Q Do you know the defendant in this particular case, Phillip Jerome Stiles?

A Yes, I do.

Q Have you ever seen him in a professional way?

A Yes, I have.

Q Have you performed upon him any psychological examinations or tests?

A Yes.

* * * *

[326] Q Prior to administering these tests, did you obtain any history from the defendant?

A Some.

* * * *

[332] The COURT. Your opinion is that a person, who draws a figure of another person in a seated position, is what?

The WITNESS. Unable to perform.

The COURT. Unable to perform what?

The WITNESS. The everyday functions of life, to make—

The COURT. Because he draws the figure in a seated position?

* * * *

[335] The COURT. Tell us what your conclusions were, Doctor, if any.

The WITNESS. My chief conclusion—I think chief conclusion—was that Mr. Stiles was able to perform, to function well as a person in a limited number of situations in which he felt comfortable. My opinion was that if he were [336] put outside these situations, he would perform poorly and that he would be in danger of experiencing severe—more severe emotional problems.

I might add, if I may, that I wasn't writing to any specific issue in coming to that conclusion. From what I knew of the history, from what I observed, I thought that Dr. Quartaroli would be interested in three or four issues, and it was in terms of these that I wrote. I felt Dr. Quartaroli would want to know how disturbed is the young man. And this was what I wrote to chiefly, and that was my chief conclusion.

Q Your chief conclusion as to how disturbed he was, Doctor: what was that, your conclusion?

A That was it. I felt that he was able to perform reasonably. He would not present strange, unusual, aberrant behavior in a situation, a very comfortable situation. I felt if great demands were placed upon him, things like school, things like a regular job, that had great amounts of tension, required very quick decisions, weighty kinds of jobs, he would have difficulty fulfilling these.

Q You say that you were addressing yourself as to how disturbed he was. Is that correct?

A That is right.

Q Did you feel he was in fact disturbed?

[337] A Yes, I did.

Q Might I ask you, Doctor, whether or not you thought he was greatly disturbed or not greatly disturbed?

A It is not a simple question to answer because I think a person is disturbed or not, depending upon the situation that he is in. For this reason I wrote that given a protected situation, Mr. Stiles would not behave in ways that would land him in a state hospital or prison—I didn't know—or in a mental hospital, but I felt that if he were put under extra stress, this might happen.

Q That he would be required to be placed in a mental hospital?

A Or its equivalent.

Q Its equivalent. As a result of your examination, did you have any concern for his mental health?

A Yes, I did.

Q You did. What was your concern for it, Doctor?

A My concern was that Mr. Stiles, I felt, is not very happy or comfortable, or feels very confident in dealing with everyday things, with holding jobs, with marrying, with having a family, with doing the routine everyday things that most people are able to do. I think these don't have very much interest—hold much interest for him. I think he is uncomfortable with them. I don't think he [338] does well with them. I think they are frightening to him.

* * * *

[342] *Cross-examination by Mr. Gearon*

* * * *

[345] Q The whole conclusion that you make of the defendant in this case is that he has an emotional problem. Is that correct?

A Yes, sir.

Q And it is of a depressive nature. Is that correct?

A In part.

[346] Q In part. What is the rest of it?

A His inability to perform as most people are able to perform in a wide area of life. He can perform ably in very small areas of life. He would make a good philosopher but a very bad surgeon.

The COURT. A very bad what?

The WITNESS. Surgeon.

The COURT. I didn't know philosophers were surgeons.

The WITNESS. I was trying to draw a distinction between areas of life. I think Mr. Stiles would make an excellant philosopher. I think he would make a terrible surgeon.

* * * *

[350] EDWARD ANTHONY VADEIKA, Sworn

Direct examination by Mr. Gearon

Q Dr. Vadeika, will you please state your qualifications; what schools you attended and your medical experience?

The COURT. What is the doctor's occupation?

Q What is your business or profession?

A I am a psychiatrist.

Q What medical school did you attend, Doctor?

A I attended Columbia University, College of Physicians and Surgeons.

Q When did you graduate?

A 1959.

Q You received a Doctor in Medicine—

A I did.

[351] Q Where did you intern, Doctor?

A Brooklyn Methodist Hospital.

Q Did you have a residency?

A In psychiatry.

The COURT. Residency in psychiatry?

The WITNESS. Yes. At New York Hospital, Westchester Division.

Q How long was that, Doctor?

A 1960 to 1963.

Q What did you do then after that?

A I went into private practice of medicine, was appointed as psychiatrist to outpatients at the Payne-Whitney Outpatient Department, and clinical instructor in psychiatry to the Cornell University Medical College.

Q How long were you there?

A From 1963 to 1966.

Q You are a Reserve officer. Is that correct?
A Yes, I am, sir.
Q Were you recalled to active duty?
A I was called to active duty in September 1966.
The COURT. Keep your voice up, please.
The WITNESS. I was called to active duty in September 1966.
Q Doctor, you are presently stationed where?
[352] A U.S. Naval Hospital, Newport, Rhode Island.
Q Have you been there since September of 1966?
A Yes, I have.
Q Do you have a specialty there at the Newport Naval Hospital?
A I am the chief of the Neuropsychiatric Service.
Q Doctor, do you recognize the gentleman sitting in the middle at the table? (indicating)
A Yes, I do.
Q Were you asked to examine him?
A I was commanded to examine him.

* * * *

Q Did you examine the defendant in this case?
A Yes, I did.
Q On what date did you examine him?
A On 13 January 1967.
The COURT. January 13, 1967.
Q Did you ask him for a history?
A Yes, I did.
Q Did he give it to you?
A Yes, he did.
Q As a result of that history, did you make certain determinations?
A Yes, I did.
[353] Q Doctor, could you tell us the results of your examinations of this defendant sitting here, please?
A On the basis of my examination of this person, I believe that he is so far free from mental disease, defect, or derangement,—
The COURT. Keep your voice up, please.
A (Continuing) I believe that he is so far free from mental disease, defect, or derangement as to be able to

distinguish the difference between right and wrong, and also to be able to adhere to the right.

Q Doctor, does he have any particular problems that you can describe to this Court and jury, psychiatrically speaking?

A I believe he has had emotional problems of long standing duration to be described essentially as anxiety, depression, poor motivation, resentment toward authority.

Q On what physical facts did you make this determination?

A The indications—the other indications of his emotional disturbances include a lifelong history of nightmares, occasional sleepwalking, occasional talking in his sleep, fingernail biting from the age of 8 to 13 or 14, fear of the dark, running away from home a few times between the ages of 16 to 18 "because I didn't like my mother; she made me feel uncomfortable by making me believe I wasn't living up to her expectations," and by homosexual relations.

[354] The COURT. These are things he told you. Is that it?

The WITNESS. Yes, sir.

Q Doctor, this is the history of his background he gave you from his early childhood. Is that correct?

A Yes, sir.

Q Doctor, directing your attention to the date of February 9, 1966, do you feel that the defendant in this case, from your examination, would have had the same—would be in the same condition as he is today?

Mr. ROGERS. Objection, your Honor.

The COURT. What is the objection?

Mr. ROGERS. Form of the question.

The COURT. Form of the question?

Mr. ROGERS. Yes, your Honor. He hasn't asked for an opinion, to the best of my belief, your Honor.

The COURT. He is seeking an opinion. Perhaps you had better rephrase it. Ask him whether he has an opinion.

Q Do you have an opinion as to the condition—mental condition, rather,—of this defendant as of the date, February 9, 1966?

A I have no indications from his history or from the clinical findings that he was any different before than he is now emotionally.

Q Doctor, you feel as though he can distinguish right [355] from wrong, so to speak?

Mr. ROGERS. Objection, your Honor; leading in a very technical area.

The COURT. Try not to lead, Mr. Gearon.

Q Doctor, do you have an opinion as to his ability to tell right from wrong?

A I believe this person is able to distinguish right from wrong.

Q Doctor, from your examination of this Mr. Stiles,—you recognize him as Phillip Jerome Stiles, do you, Doctor?

A I do.

Q (Continuing)—do you feel that he has any mental disease or mental defect?

Mr. ROGERS. Objection, your Honor; form of the question, again highly technical area.

Mr. GEARON. He can answer that yes or no.

The COURT. Ask him if he has an opinion.

Q Do you have an opinion as to whether or not he has a mental disease?

A I do.

Q And what is that opinion, Doctor?

A I believe his mental disease consists of emotional disturbance.

Q Would you say it is a defect, a mental defect? Do you [356] have an opinion, rather, as to whether or not it is a mental defect?

A Yes, I do.

Q And what is that opinion?

A That it is not a mental defect.

Q It is not a mental defect. Now, Doctor, I would like to ask you if you have an opinion that from your examination, based upon the history of what Mr. Stiles told you, you feel that he has a mental defect to lack substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law? Do you have such an opinion?

A I do.

Q And what is that opinion, Doctor?

A I believe he does not lack substantial capacity to appreciate the wrongfulness—to appreciate the wrongful-

ness of his behavior or to conform his behavior to the requirements of the law.

Q But you feel he is emotionally disturbed. Is that correct?

A Yes, sir.

* * * *

Cross-examination by Mr. Rogers

* * * *

[357] Q You say you conducted an examination of the defendant, Phillip Stiles, on January 13, 1967.

A Yes, I did.

Q Were there other people present?

A Yes, there were.

Q Would you identify them, please?

[358] A Dr. Frank Moscarillo.

Q His rank, please?

A Lieutenant Commander, Medical Corps, U. S. Naval Reserve.

Q Would you spell his name?

A M-o-s-c-a-r-i-l-l-o. And Dr. Arthur Schwartz, Lieutenant Commander, Medical Corps, U. S. Naval Reserve.

Q You say you were commanded to examine him. I don't understand this, Doctor. Who comamnded you to examine him?

A My commanding officer.

Q Who is he?

A Dr. Edward Hogan, Captain Edward Hogan.

Q Do you recall this examination, Doctor? It is fairly recent.

A Yes, I do.

Q Do you recall at approximately what time the examination began?

A The examination began at approximately 4:15.

The COURT. Approximately when?

The WITNESS. 4:15.

The COURT. P.M.?

Q P.M.?

A Yes.

Q Do you recall approximately when the examination ended?

A Approximately 5:15.

[359] Q Did you have any other contact with the defendant at any time other than those times, 4:15 P.M. to 5:15 P.M., on January 13, 1967?

A No, I did not.

Q Then all of your testimony and all of your conclusions are based on that particular time. Correct?

A Yes, they are.

Q One hour. Is that right?

A That is right.

* * * *

[360] Q Now you had taken history from him. Correct?

A That is right.

Q Do your notes reveal that he had—isn't there a question that you asked him: had he ever been in a hospital or seen a doctor for nerves or emotional condition?

A Yes.

Q What was his answer to that question, Doctor?

A He had seen a number of psychiatrists and psychologists since 1958.

Q Do your notes indicate 1958 to 1959, psychiatrist; 1959-1960, psychiatrist; 1961-1962, psychologist; 1966, psychiatrist for depression, anxiety, was seen weekly for hourly sessions?

[361] A Yes, they do.

Q Did you ask him whether or not he was presently under psychiatric medication at this time?

A We asked him if he were under psychiatrict treatment at this time.

Q Do your notes say anything about being at that time under psychiatric medication?

A No.

The COURT. What is meant by psychiatric medication? You mean pills?

Mr. ROGERS. Medication prescribed by psychiatrists.

Q Your notes don't say that?

A No.

Q Would you care to examine your notes, Doctor?

A My notes state: "He is presently under psychiatric treatment."

Q What does "RX" customarily mean in medical terminology, Doctor?

A In my terminology it is shorthand for treatment.

Q Do your notes indicate whether or not you made an evaluation as to his fitness for service?

A Yes.

Q And what was your evaluation in that area?

Mr. GEARON. Objection, your Honor.

[362] The COURT. Objection sustained. It has no place in this case whatever, Mr. Rogers. The sole question before this Court is whether there was a wilful failure to report for induction. I need no argument. The Court has ruled.

Mr. ROGERS. Yes, your Honor.

Q Now, Doctor, you said that the defendant suffered from long-standing depression, anxiety, and poor motivation. Is that correct?

A Yes.

The COURT. That is what he told you?

The WITNESS. Yes.

* * * *

[370] Q Now, Doctor, the sum total of your knowledge of this man comes from a one-hour observation in a room with two other doctors and what he told you. Right?

A That is right.

Q And on the basis of that, you formed the opinion that you gave here today. Right?

A That is right.

* * * *

Q Did you ever ask him whether or not he used narcotic drugs?

A No, we did not.

* * * *

[371] Q Did you feel it proper or didn't you feel it proper to ask him whether or not he had used narcotic drugs?

A We didn't decide on the propriety of asking him about narcotic drugs.

* * * *

[372] Q Did you inquire of the defendant whether or not he used, for example, LSD?

A No, I did not.

* * * *

[378] Q Did you ever discuss with him suicide, Doctor, self-destruction?

A No, we did not.

Q You did not. Do you feel that an accurate diagnosis can be made of a person psychiatrically without determining whether or not they harbor ideas of self-destruction?

A Yes, I do.

Q You do. You said this examination lasted for an hour. Right?

A That is right.

Q Out of that hour, Doctor, about how much time did you have with the patient?

A One hour.

Q The whole hour. Did you take those notes?

[379] A Yes, I did.

* * * *

Q Did the defendant's history reveal to you, Doctor, a long history of treating with psychiatrists?

A Yes, it did.

* * * *

[380] Q Now, Doctor, during this one hour, about how much of it was used by your questions?

A I would estimate approximately a third.

Q Approximately one-third. And are you basing your [381] diagnosis on the questions that you asked and what you observed? Is that right?

A On what we all asked and observed.

Q In other words, then you are not basing it on what you asked and what you observed.

A Not solely.

Q Not solely. Did you discuss your testimony with anyone prior to coming here?

A Yes, I did.

Q Who?
A With Dr. Schwartz.
Q I see. Anybody else?
A No, I did not.
Q Did you discuss it with the District Attorney?
A Yes, I did.
Q When did you discuss it with the District Attorney?
A Before entering the courtroom.
Q Did you discuss your testimony with your commanding officer?
A No, I did not.
Q You didn't. What was your diagnosis again, Doctor?
A Emotional disturbance.
Q Emotional disturbance. And all of your direct examination and all of your opinions again are based on a [382] one-hour examination. Correct?
A A history and an examination.
Q A history and an examination?
Mr. GEARON. I am going to object to the form of the question, your Honor. It doesn't make any difference whether it was one hour or a day.
Mr. ROGERS. To me it does, your Honor.
The COURT. That may be a matter for argument, Mr. Gearon.
Q The question, Doctor,—and a history, you say, was given to you by the defendant. Right?
A Yes.
Q And you considered him suspicious of you. Right?
A Yes.
Q You considered him watchful of you. Right?
A That is right.
Q And he verbalized with you in a guarded and evasive and vague manner. Right?
A That is right.
Mr. ROGERS. Thank you. Nothing further.

* * * *

[383] *Redirect examination by Mr. Gearon*

Q There was a question on cross-examination that it would help in a diagnosis to know whether this man had

used, say, LSD; and you said—LSD or marihuana or amphetamines—but you didn't ask the question because you did not feel it necessary. Is that correct?

A That is right.

Mr. ROGERS. Objection as to the form of that question certainly.

Mr. GEARON. I will withdraw the question.

Q Doctor, do you feel it was necessary for you, in order to make a diagnosis of Mr. Stiles, whether or not he used a drug—the amphetamine drugs?

Mr. ROGERS. Objection, your Honor. That has been asked and answered. It is nothing new on redirect.

The COURT. I thought the witness had answered. He said it didn't make any difference.

Q Now, Dr. Vadeika, did Stiles tell you of his feelings towards military service?

A Yes, he did.

Q What was that, please?

A He stated—and this is verbatim:

"I don't want to go into military service. I am op-
[384] posed to going into an organization using force or regimentation. I am hostile but I repress it. I don't want to be told what to do by some officers on some firing range. I don't know what I might do if I am on active duty in combat."

Mr. GEARON. Thank you, Doctor. No further questions.

Mr. ROGERS. Might I have the last question and answer read back, please?

(Last question and answer, as above, read by reporter)

Recross-examination by Mr. Rogers

Q With reference to your questioning, strictly about the Armed Forces, did you come to any conclusion?

Mr. GEARON. Objection, your Honor.

The COURT. Any conclusion as to whether or not he was suffering from a mental disease?

Mr. ROGERS. No, your Honor.

The COURT. I think, Mr. Rogers, my ruling has been made plain to you. If you are seeking to go into some other matter, I have instructed you not to.

Mr. ROGERS. Yes, your Honor. Thank you.

Mr. GEARON. No further questions. Thank you, Doctor.

* * * * *

[389] Bring in the jury, Mr. Marshal.

(Jury returned at 11:08 A.M.)

(Arguments of counsel)

The COURT. Mr. Foreman, ladies and gentlemen of the jury, now that you have heard all the evidence and the arguments of counsel, it becomes my duty to instruct you as to the principles of law which you will follow in your determination of the issues in this case, namely, the guilt or innocence of the defendant of the offense with which he is charged.

Although you, as members of the jury, are the sole judges of the facts in this case, you are duty-bound to follow the law as I shall give it to you in these instructions and to apply that law to the facts as you find the facts to be solely from the evidence which has been presented here during this trial.

You are not to single out any one particular instruction alone as being the law, but you must consider these instructions as an entirety. Neither are you to be concerned with the wisdom of any rule of law, regardless of any opinion you might have as to what the law ought to be. It would be a violation of your sworn duty, as members of this jury, to base your verdict in this case upon any version of the law other than that which I am [390] about to give to you.

As you well understand, this has been the trial of a criminal case, of an indictment returned by a federal grand jury for the District of Rhode Island. This indictment, which you will have in your jury room, charges in substance that on or about February 9, 1966, at Providence, in the District of Rhode Island, the defendant being a person over the age of 18 years and under the age of 26 years, and a person subject to and registered under

the Universal Military Training and Service Act, did wilfully and knowingly fail, neglect and refuse to perform a duty required of him under and in execution of said Act and the rules, regulations and directions duly made pursuant thereto, in that he did fail, neglect and refuse to comply with an order of his local Selective Service System Draft Board to submit to induction into the Armed Forces of the United States, in violation of 50 Appendix, United States Code, Section 462.

That section of the United States Code provides in pertinent part that any person subject to and registered under the Universal Military Training and Service Act who shall wilfully and knowingly fail, neglect or refuse to perform a duty required of him under and in execution of that act and the rules, regulations and directions [391] made pursuant thereto, shall be guilty of an offense against the laws of the United States.

The defendant here has pleaded not guilty, and not guilty by reason of insanity, and thus has placed upon the Government the burden of proving that he committed the offense with which he is charged; and, further, that he was mentally competent at the time he committed said offense.

The law does not hold a person criminally accountable for his conduct while he is insane.

You will have the indictment, which I have just summarized, in your jury room. It is merely a statement of the offense with which the defendant is charged; in other words, the accusation made against him. The indictment itself is not evidence of the guilt of the defendant and you must not—and I know your will not—regard the indictment itself as being any evidence against him.

In every criminal case the defendant at the outset of his trial is presumed under the law to be innocent of the offense with which he is charged. This presumption of innocence exists in his favor and abides with him throughout his trial for his proper protection until his guilt of the offense with which he is charged is established by proof beyond a reasonable doubt.

[392] This proposition is true not only as to the offense as a whole, but as to every essential or material element of the offense with which he is charged.

In a criminal case the burden is not upon a defendant to prove his innocence. The burden rests upon the Government to establish the guilt of a defendant in a criminal case by proof beyond a reasonable doubt. This burden of proof never shifts and rests upon the Government throughout the trial. But it is a burden which may be sustained by either direct or circumstantial evidence or by a combination of direct and circumstantial evidence.

You may ask, and properly, "What does the Judge mean by beyond a reasonable doubt"? By a reasonable doubt I do not mean a doubt that is merely arbitrary and capricious or imaginary, and I don't mean a doubt born of a reluctance to perform an unpleasant duty, or a doubt arising out of sympathy for a defendant. What I do mean by a reasonable doubt is that frame of mind which forbids you to say, after a conscientious, careful, common sense consideration of all of the evidence and the reasonable inferences to be drawn from it, that you have an abiding conviction as to the guilt of the defendant of the offense with which he is charged.

[393] Stating it another way, if, after such a consideration of the evidence and the inferences to be drawn from it as I have described, you are of that frame of mind which forbids you to say, "I am convinced of the defendant's guilt to a moral certainty," then you have a reasonable doubt and your verdict should be not guilty.

On the other hand, if, after such a conscientious consideration of all of the evidence and the reasonable inferences to be drawn from it, you can say, "I am convinced of the defendant's guilt to a moral certainty," then you have no reasonable doubt and your verdict should be guilty.

But I do instruct you that no defendant is to be found guilty on mere suspicion or speculation. On the contrary, if, after such a consideration of the evidence as I have described, you are of that frame of mind where if the matter before you were a matter of importance to you in your daily affairs, you would hesitate to act upon it, then you have a reasonable doubt as to the guilt of the defendant and your verdict should be not guilty.

A reasonable doubt means a doubt arising from the evidence or lack of evidence after an honest, intelligent and realistic consideration of all of the evidence or lack of evidence and the reasonable inferences to be drawn from [394] it. As I said before, a reasonable doubt is not a vague, speculative or imaginary something.

When a juror takes her or his place in the jury box, she or he is not to shed her common sense and intelligence, but, on the contrary, is expected to use them.

During the course of this trial there have been some occasions when counsel for the Government and counsel for the defendant have addressed arguments to the Court on questions of law or upon the admissibility or exclusion of evidence. It is both the right and the duty of the attorney on each side of a case to object when opposing counsel seeks to introduce evidence or testimony which he deems to be inadmissible. It then becomes my duty, as the Judge of this Court, to rule on the admissibility of such evidence or its exclusion. But I do caution you that these arguments of counsel are not evidence and are not to be regarded by you as evidence.

Similarly, whenever I sustained an objection to a question and ruled that the question was improper, it became your duty to disregard that question completely for a question is never evidence, and you should not draw any inference from the way the question was worded or speculate as to what the answer might have been had I allowed the question.

[395] I instruct you that whenever I ordered an answer stricken from the record, it became your solemn duty to disregard that answer completely as though it were never given.

As I said before, Mr. Foreman, ladies and gentlemen, you are the sole judges of the facts in this case. It is your recollection of the evidence which you will follow in your deliberations. You will test the inherent probabilities of the testimony and the evidence presented here and determine wherein lies the truth.

You will consider the exhibits, which have been introduced in evidence, the possible interest, if any, of the several witnesses who have testified in the outcome of

this case, their demeanor, their manner of testifying, and give to their testimony such weight and such credence as you believe it deserves.

You must, and I know you will, decide this case solely upon the evidence presented here during this trial.

I instruct you that a witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has done or said something, or failed to do and say something, which is inconsistent with the witness' testimony. If you believe that any witness in this case has been impeached and discredited, it [396] is your exclusive province to give to the testimony of that witness such credibility, if any, as you think it deserves.

I instruct you further that in a criminal case the failure of the defendant to take the stand and to testify in his own behalf creates no presumption of his guilt, and no inference of any kind may be drawn from his failure to testify. A defendant in a criminal case has a constitutional right not to take the stand. I do instruct you that you must not permit the fact that the defendant did not testify in this case to weigh in the slightest degree against him. This fact should not, and must not, enter into your deliberations in any way, shape or manner.

Ordinarily the rules of evidence do not permit a witness to testify as to his opinions or conclusions, but a so-called expert witness is an exception to that rule. A witness who, by education and experience, has become expert in any art, science, profession or calling, may be permitted to state his opinion as to a matter in which he is versed and which is material to the case, and may also state his reasons for his opinion.

You should consider the expert opinions received in evidence in this case and give to them such weight as you think they deserve. You may reject them entirely if you [397] conclude the reasons given in support of those opinions are unsound.

At the outset I instruct you that you are not to concern yourselves with what classification you would have given the defendant had you been a draft board member. It is my opinion, and I so find, the classification accorded

to the defendant by said Local Draft Board No. 4 was proper and in conformity with the Universal Military Training and Service Act and the regulations thereunder.

In a case such as this, where there has been a plea of not guilty by reason of insanity,—in other words, in a case where the mental capacity of the defendant to commit the offense with which he is charged is put in issue —I instruct you that the mental capacity of the defendant to commit the offense is an essential element of that offense.

I instruct you that before you may find the defendant guilty, as charged, you must be satisfied beyond a reasonable doubt not only that he committed the offense with which he is charged, but also that he was criminally responsible for his conduct. I further instruct you that a person is deemed not criminally responsible for his conduct if at the time of such conduct, as a result of mental disease or defect, he lacked substantial capacity either to [398] appreciate the wrongfulness of his act or to conform his conduct to the requirements of the law.

I instruct you that in this case the test for criminal responsibility means that before you may return a verdict of guilty, as charged, you must be convinced beyond a reasonable doubt that at the time the defendant committed the offense charged—if in fact he did—he was mentally capable of knowing what he was doing, was mentally capable of knowing that it was wrong, and was mentally capable of controlling his conduct.

To warrant you in finding the defendant guilty, the Government must establish by proof beyond a reasonable doubt

(1) that the defendant on or about February 9, 1966, or a date reasonably close thereto, being a person subject to and registered under the Universal Military Training and Service Act, did wilfully and knowingly fail, neglect or refuse to submit to induction in the Armed Forces of the United States; and

(2) that he was mentally capable of knowing what he was doing, mentally capable of knowing what he was doing was wrong, and mentally capable of controlling his conduct.

I instruct you, as used in this indictment, "wilfully" means deliberately and knowingly. A wilful failure means [399] a deliberate, intentional omission to act in contrast to an accidental, mistaken, negligent or inadvertent omission to act. To put it another way, failure to act is wilfully done if done voluntarily and purposely, with the specific intent to fail to do what the law requires to be done; that is, with a bad purpose to disobey or disregard the law and with knowledge of an obligation in this case to submit to an induction into the Armed Forces of the United States.

Wilfulness is, of course, a question of fact. Direct proof of it, it being a state of mind, is seldom available; and direct proof of wilfulness is not essential and is not required. Wilfulness may be inferred from a combination of acts and circumstances, although each act or circumstance, standing alone, may be insufficient or inconclusive.

If the Government has satisfied you by the required degree of proof, as I have defined it, that the defendant, being a person subject to and registered under the Universal Military Training and Service Act, did on or about February 9, 1966, or at a date reasonably close thereto, wilfully and knowingly fail, neglect or refuse to submit to induction into the Armed Forces of the United States, [400] and, further, that he was then and there mentally capable of knowing what he was doing, was mentally capable of knowing it was wrong, and was mentally capable of controlling his conduct, then your verdict shall be guilty.

On the other hand, unless the Government has satisfied you by the required degree of proof, that is, by proof beyond a reasonable doubt, that the defendant did wilfully and knowingly fail, neglect or refuse to submit to induction and, further, that the defendant was then mentally capable of knowing what he was doing, mentally capable of knowing what he was doing was wrong, and was mentally capable of controlling his conduct, then in that event your verdict shall be not guilty or not guilty by reason of insanity, depending upon what you find the facts to be.

I don't intend to undertake to review the evidence in this case. It has been a relatively short trial. That evidence undoubtedly is just as fresh in your minds as it is in mine.

As I said to you earlier in this charge, Mr. Foreman, ladies and gentlemen, you are the sole judges of the facts in this case. What was said by counsel for the Government, what was said by counsel for the defendant during the presentation of the evidence and during their respec-
[401] tive final arguments is not evidence and is not controlling upon you. You are not bound by their recollections of the evidence, nor by their interpretations of the evidence. You will accept their recollections and their interpretations of the evidence only insofar as they agree with your own. It is for you to apply your good hard common sense, your intelligence as mature men and women, and determine what are the true facts in this case.

This is not a complicated case. The issues are simple. Take this case. Be true to your solemn oaths as members of this jury. Give it your commonsense, your honest and intelligent consideration. Do not let prejudice or sympathy enter into or influence your judgment in any way.

You are not to concern yourselves with the matter of possible penalties. That is the responsibility of this Court and of no one else.

Be fair to the United States. Be fair to the defendant. Render a fair and impartial verdict: either guilty or not guilty or not guilty by reason of insanity. That verdict must be unanimous. When you have reached it, I shall be here to receive it.

Anything, gentlemen?

Mr. ROGERS. No. your Honor.

[402] The COURT. Very well.

(Spare juror excused)

(Jury retired at 12:15 p.m.)

The COURT. The Court will now stand in recess.

(NOON RECESS)

AFTERNOON SESSION

(Jury returned at 3:50 p.m.)

The CLERK. Mr. Foreman, has the jury agreed upon a verdict?

The FOREMAN. We have, your Honor.

The CLERK. In the case of United States of America v. Phillip Jerome Stiles, known as Indictment No. 7295, how does the jury find?

The FOREMAN. The jury finds the defendant guilty as charged.

The CLERK. Mr. Foreman, ladies and gentlemen of the jury, hearken to your verdict as the Court hath recorded it. In the case of United States of America v. Phillip Jerome Stiles, we, the jury, find the defendant guilty. So say you, Mr. Foreman; so say you all, ladies and gentlemen.

[403] The COURT. Mr. Foreman, ladies and gentlemen, the Court wishes to express its appreciation for the consideration it knows you gave to this case. We can't tell you at the moment when we will need you here again, but you can be certain we will give you just as much advance notice of that date as we possibly can. You are free to leave now with the thanks of the Court.

(Jury excused at 4:52 p.m.)

Mr. GEARON. Your Honor, may this case be continued to February 3rd for sentencing, your Honor; the defendant to remain at liberty on the same bail?

The COURT. The Court has given consideration to the defendant's motion for judgment of acquittal. Having in mind the well settled rule that in passing upon such a motion, it is the duty of the Court to view the evidence and all the reasonable inferences to be drawn from it in the light most favorable to the Government, it feels this was indeed a proper case for submission to the jury.

Accordingly, the defendant's motion for judgment of acquittal is denied. The defendant's objection to the Court's ruling is noted.

The case is continued to February 3rd for sentence; the defendant meanwhile to remain at liberty under bail

heretofore furnished. We will adjourn until 11 o'clock tomorrow morning.

(Adjourned at 4:55 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Ind. No. 7295

UNITED STATES OF AMERICA

vs.

PHILIP JEROME STILES

DEFENDANT'S REQUEST FOR INSTRUCTION—
Filed January 23, 1967

Now comes the defendant in the above-entitled cause and moves and respectfully requests that this Honorable Court instruct the jury as follows:

1. The defendant in this case stands charged under Indictment 7295 as follows: "That on or about the 9th day of February, 1966, at Providence, in the District of Rhode Island, Philip Jerome Stiles, being a person over the age of 18 years and under the age of 26 years, and a person subject to and registered under the Universal Military Training and Service Act, did wilfully and knowingly fail and neglect and refuse to perform a duty required of him under and in execution of said Act and the rules, regulations and directions made duly pursuant thereto, in that he did fail, neglect and refuse to comply with an order of his local selective service board to submit to induction into the armed forces of the United States; in violation of 50 App., U.S. Code, Sec. 462."

2. The defendant stands before this Jury with a presumption of innocence until he is proven guilty in the minds of this Jury, and by this Jury, beyond a reasonable doubt. The defendant has, in fact, submitted two pleas to this charge, The first of which being Not Guilty,

and the second of which being Not Guilty by Reason of Insanity.

3. All decisions of this Jury as to the guilt of this defendant, must, in fact, be unanimous. If this Jury in total or any member of this Jury in particular needs further instruction as to the law of this case, the same may in fact be obtained by simply making this fact known to myself, as Judge. I will give you further instructions upon request at any time in this case.

4. If you feel that the prosecution, or government, has not in fact proved every single allegation of its indictment against the defendant beyond a reasonable doubt, you must, in fact, find the defendant not guilty. If you feel that the government or the prosecution did not in fact prove that the defendant did wilfully and knowingly fail neglect and refuse to perform a duty required of him under and in execution of the Universal Military Training and Service Act beyond a reasonable doubt, you must, in fact, find the defendant not guilty.

With reference to the plea of not guilty by reason of insanity specifically, I hereby instruct you as follows:—

5. A person is not responsible for criminal conduct if, at the time of such conduct as a result of mental disease or defect he lacks the substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

And, further I instruct you:

6. The terms, mental disease or defect, do not include an abnormality manifested only be repeated criminal or otherwise anti-social conduct.

If, after your deliberations, you feel that the defendant adheres or fits in, so to speak, to the rule that I have just given you, you must in fact find him not guilty.

Respectfully submitted,

By his Attorneys,

/s/ Charles J. Rogers, Jr.
/s/ John A. Notte, III

[Certification of service (omitted in printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Ind. No. 7295

UNITED STATES OF AMERICA

vs.

PHILIP JEROME STILES

MOTION FOR NEW TRIAL—Filed January 23, 1967

Now comes defendant Philip Jerome Stiles, within the statutory period allowed by the law, and moves that this Honorable Court grant to him the defendant, Philip Jerome Stiles, a new trial. Defendant respectfully represents to this Honorable Court that the verdict arrived at was in conflict with the testimony produced, the evidence produced, and the law of the United States. Defendant further respectfully submits that in granting the motion for a new trial, the petitioner, namely the government of the United States, will not suffer harm in any degree whatever, but that the denial of this motion, will in fact cause great hardship upon the defendant. Defendant further respectfully submits to this Honorable Court that his motion is not a spurious motion, but that rather has a sufficient legal basis, to cause this Court, to arrive a finding in conformity with the motion of defendant, and to at all times adhere to the law of the United States of America.

Respectfully submitted,
PHILIP JEROME STILES
By his Attorneys,

/s/ Charles J. Rogers, Jr.
/s/ John A. Notte, III

[Certificate of service (omitted in printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Indictment No. 7295

UNITED STATES OF AMERICA

vs.

PHILIP JEROME STILES

ORDER—February 21, 1967

This cause came on for hearing on February 20, 1967 on defendant's motion for a new trial, was argued by counsel and, thereupon, upon consideration thereof, it is ORDERED:

That the said motion be, and the same is hereby, denied.

By Order,

/s/ Neale D. Murphy
Clerk

ENTER:

/s/ Edward W. Day
Chief Judge
United States District Court
February 21, 1967

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Ind. No. 7295

UNITED STATES OF AMERICA

v.

PHILLIP JEROME STILES

Before his Honor, Judge Day
Friday, March 17, 1967

APPEARANCES:

For the Government:

William J. Gearon,
Assistant United States Attorney

For the Defendant:

Charles J. Rogers, Jr., Esq.

SENTENCE—Filed, Clerk's Office, U. S. District Court,
District of Rhode Island, April 20, 1967,
Neale D. Murphy, Clerk

[2] Mr. GEARON. Chief Judge Day, may it please the Court, I think your Honor is familiar with this case, it having just recently been tried and wherein a defense of insanity was put forth as a reason for failure to comply with the orders of the Draft Board. I don't think I have to review the evidence at all in this case, your Honor.

This defendant at various times notified the Draft Board of his whereabouts by post card. He took a trip to Mexico during a period of time subsequent to the order of his induction. On the plea of insanity your Honor certainly gave him the benefit of the new and enlightened rule concerning the same and didn't strictly adhere to the old McNaughton rule. The jury didn't think that the defendant was so unmindful of his duties that he couldn't distinguish that he was not doing the proper thing, and

didn't accept the plea of not guilty by reason of insanity It came back with a verdict of guilty.

Mr. ROGERS. If it please the Court, the defendant was in fact found guilty as charged, and the matter is before this Honorable Court this morning for sentence, your Honor.

I submit to the Court that the defendant at this time, though he stands convicted, has in fact been accepted at Columbia University and at the present time is engaged as a full-time student at said Columbia University, your Honor. The Assistant United States Attorney is in fact [3] correct that a plea of not guilty by reason of insanity was submitted as a defense before this Honorable Court. The jury did in fact reject it, your Honor, but I feel in passing upon this defendant, your Honor, the history of this defendant, medically and mentally, should in fact be taken into consideration. The boy has treated since he was four years old with psychiatrists. His physician came here and testified, your Honor. He is not the same boy who failed to report for induction. He has been under treatment.

The fact, your Honor, that he is in fact a student at Columbia University, your Honor, I think this Court should weigh, and, I trust, would weigh in imposing sentence. I respectfully suggest to the Court that this boy to my knowledge is not in fact fit for military service. I submit the first matter on the record of the transcript of this case would indicate that, your Honor; that the boy is not a fit subject for military service.

I would urge upon the Court that I personally, as well as the prosecution, feel that draft violations certainly, your Honor, are serious matters. I would urge upon the Court, respectfully, to consider that the essence certainly of imposing a penalty is certainly rehabilitation. This boy, if your Honor would see fit to give to him a suspended sentence, your Honor, I feel would in fact be a product [4] of Columbia University, going to become a valuable citizen to the state and country. And I submit to this Court I have come to know this boy quite well and I helped him, I trust, a little. We have had many discussions, your Honor, and I submit to the Court he is in

fact sorry. He stands convicted. He is sorry for the offense certainly, your Honor. But I urge upon the Court to consider, in passing sentence upon him, the fact that he is what he is, a sick boy, but with a chance to graduate from Columbia. And I submit to this Court I asked him less than five minutes ago how his grades were, and he said he was doing well, your Honor.

I would urge upon the Court to consider granting suspension of execution of any prison term this Court might feel the situation warrants. Thank you, your Honor.

The COURT. Anything you care to say, Stiles, before the Court imposes sentence?

The DEFENDANT. Only that I regret my failing to meet the demands of the Draft Board last February, a year ago.

The COURT. The Court remembers this case quite clearly. At the time I passed upon the motion for a new trial I indicated I felt that the jury was more than justified in reaching its verdict and finding that the defendant was not in fact insane under the most liberal tests of insanity at the time he failed to report for induction.

The pre-sentence report in a way confirms what I [5] thought while I listened to this trial and observed the defendant; to wit, that the defendant possessed more than average intelligence; and I am confirmed in that conclusion. In my judgment this young man was one of these misguided young people, who thinks he is above the law, that he is entitled to special consideration. I don't think he is insane any more than I am. He in fact, from the tenor of the cards and communications he sent to the Draft Board, regarded himself as above the ordinary individual who had to comply with the law, and made a decision; and now he has got to live with that decision. Sometimes we can be a little too smart for our own good, and I think that is what this case indicates. Certainly I don't think for one moment that the authorities at Columbia University would accept this young man as even a provisional student if he didn't possess the requisite intelligence. We can't have one law for those who regard themselves of superior intellectual capacity, and another law for the remainder of our young men who are eligible for military service.

I consider this to be a deliberate violation. I further consider that the jury's verdict was more than amply substantiated by the evidence. It is the judgment of the Court the defendant be committed to the custody of the Attorney General of the United States or his authorized representative for a term of 2 years.

[6] The CLERK. Phillip Jerome Stiles, it is the judgment of this Court that you shall be committed for a period of 2 years to the custody of the Attorney General of the United States or his authorized representative who shall designate the place of confinement where the sentence shall be served.

[Reporter's certificate (omitted in printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Ind. No. 7295

UNITED STATES OF AMERICA

v.

PHILLIP JEROME STILES

JUDGMENT AND COMMITMENT—March 17, 1967

On this 17th day of March, 1967 came the attorney for the government and the defendant appeared in person and [1] by counsel, Charles J. Rogers, Esquire

IT IS ADJUDGED that the defendant has been convicted upon his plea of [2] Not Guilty and Jury Verdict of Guilty of the offense of Failure to submit to induction in violation of 50 U.S.C. App. 462

as charged [3]

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized

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[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number . " if required.

representative for imprisonment for a period of[4] two years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the Commitment of the defendant.

/s/ Edward W. Day
United States District Judge

/s/ Neale D. Murphy
Clerk

---

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

[6] For use of Court wishing to recommend a particular institution.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

Ind. No. 7295

UNITED STATES OF AMERICA

vs.

PHILIP JEROME STILES

NOTICE OF APPEAL—Filed March 17, 1967

Name and address of Appellant:

Philip J. Stiles
639 East 11th Street
New York, New York

Appellant's Attorney's Name and Address:

Charles J. Rogers, Jr.
1612 Industrial Bank Bldg.
Providence, Rhode Island

Offense:

Appellant was charged with neglect and refusal to comply with an order of his local Selective Service Board to submit to induction into the Armed Forces of the United States in violation of 50 Ap., U.S. Code, Section 462.

Judgment:

On March 17, 1967, Appellant was sentenced by the United States District Court to a term of two (2) years at a place to be determined by the Attorney General of the United States of America.

The above named Appellant hereby appeals to the United States Circuit Court of Appeals for the First Circuit from the above stated judgment.

PHILIP JEROME STILES
By his attorney,

/s/ Charles J. Rogers, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

Ind. No. 7295

UNITED STATES OF AMERICA

vs.

PHILIP JEROME STILES

ORDER—March 22, 1967

This cause came on to be heard on Appellant's Motion for Leave to File Appeal In Forma Pauperis, and after due consideration, it is hereby

ORDERED:

1. That the motion be and the same is hereby granted.
2. That the costs of filing said appeal, the cost of transcript of the case, and the costs of printing of the record on appeal and briefs and citations of authorities be paid by the United States.

ENTERED as an Order of this Honorable COURT, this 22nd day of March, A.D. 1967.

BY ORDER:

/s/ Neale D. Murphy
Clerk

ENTER:

/s/ Edward W. Day
Judge, United States District Court

[Clerk's Certificate (omitted in printing)]

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Roger A. Stinchfield
Clerk

1602 U. S. P. O. Court House
Boston, Massachusetts 02109
September 20, 1967

To Counsel:

No. 6909, Philip Jerome Stiles v.
United States of America.

Dear Sirs:

Enclosed to each of you is a copy of the judgment entered in this case today.

The Court filed no opinion.

Sincerely yours,

ROGER A. STINCHFIELD
Clerk

By /s/ Dana H. Gallup
Chief Deputy Clerk

Charles J. Rogers, Jr., Esquire
1612 Industrial Bank Building
Providence, Rhode Island.

William J. Gearon, Esquire
Assistant U. S. Attorney
223 Federal Building
Providence, Rhode Island, 02903.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6909

PHILIP JEROME STILES, DEFENDANT, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

JUDGMENT—September 20, 1967

This cause came on to be heard on appeal from the United States District Court for the District of Rhode Island, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

ROGER A. STINCHFIELD
Clerk

By /s/ DANA H. GALLUP
Chief Deputy Clerk

[cc. Messrs. Rogers and Gearon.]

SUPREME COURT OF THE UNITED STATES

No. 772 Misc., October Term, 1967

PHILIP JEROME STILES, PETITIONER

v.

UNITED STATES

On petition for writ of Certiorari to the United States Court of Appeals for the First Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—May 6, 1968

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1400 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 315585 68

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JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 74

PHILIP JEROME STILES,

Petitioner,

vs.

UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR PETITIONER

CHARLES J. ROGERS, JR.
725 Howard Building
Providence, Rhode Island 02903
Attorney for Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 74

PHILIP JEROME STILES,

Petitioner,

vs.

UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR PETITIONER

Travel of the Case

Appellant was indicted by the United States Grand Jury within and for the District of Rhode Island, under Indictment No. 7295 charging appellant with wilfully and knowingly failing, neglecting and refusing to perform a duty required of him under and in execution of the rules, regulations and directions of the Universal Military Training Act, being a person over the age of eighteen (18) years and under the age of twenty-six (26) years, and failing, neglecting and refusing to comply with an order of the Local Selective Service System Board to submit to induction, etc., in violation of 50 U.S.C. App., Section 462. On

October 7, 1966 appellant was arraigned before Mr. Chief Justice Day of the United States District Court for the District of Rhode Island and entered a plea of not guilty as charged. On January 12, 1967, appellant filed an additional plea to the indictment. Said plea being a plea of not guilty as charged by reason of insanity. On January 17, 1967, the matter proceeded to trial before Mr. Chief Justice Day of the United States District Court for the District of Rhode Island, and a jury. On January 23, 1967, upon the conclusion of the evidence in said case, the jury returned a verdict of guilty. After filing appropriate motions, and upon denial of the same by Mr. Chief Justice Day, the appellant was sentenced to a term of two (2) years at a place of detention to be determined by the Attorney General of the United States, on March 17, 1967. On said date, March 17, 1967, appellant filed notice of intention to prosecute appeal. On March 22, 1967 appellant's motion for leave to file appeal in forma pauperis with supporting affidavits of appellant were filed, the same being granted by Mr. Chief Justice Day of the United States District Court for the District of Rhode Island. Subsequent to filing notice of intention to prosecute appeal, the matter is now presented to this Honorable Court on appeal for determination. On September 12, 1967 the matter was argued before the United States Circuit Court of Appeals for the First Circuit, Boston, Massachusetts. On September 20, 1967 judgment was entered by said Court, affirming the judgment of the District Court, with no written opinion. Petition for Writ of Certiorari was filed with the United States Supreme Court on October 9, 1967, and was granted by this Honorable Court on May 6, 1968.

Statement of Facts

The appellant in the instant case is a citizen of the United States, and a citizen of the State of Rhode Island. Selective Service officials, under oath testified that appellant filled out Selective Service questionnaire on April 18, 1963. Appellant was classified 1-A on June 6, 1963 and notice was sent to him of this classification on June 13, 1963. Appellant was re-classified 1-A on March 11, 1964, and notice was sent to appellant on March 12, 1964. Appellant was classified 2-S on October 29, 1964 and notice was sent on November 6, 1964. Appellant was classified 1-A on November 9, 1965 and notice was sent to appellant on November 17, 1965. On November 29, 1965 current information questionnaire, so-called, and an order for physical examination was directed to appellant. Appellant failed to report for said examination. On December 21, 1965, another current information questionnaire was directed to appellant, and in addition thereto, there was an order directed to appellant to report for a physical examination on January 6, 1966. On January 11, 1966, notice was sent to appellant that he failed to report for the physical examination. On January 14, 1966 a pre-induction physical examination order was directed to appellant. The examination was scheduled for January 20, 1966. On January 24, 1966 Selective Service form 252, an order to report for induction on February 9, 1966 was sent to appellant. The appellant failed to appear for induction on the date contained in said order. On February 16, 1966 notice was sent to Headquarters, Selective Service, that appellant did in fact fail to report for induction. The record would indicate that all communications designated to this point in

this statement of facts were in fact sent to appellant at 10 Fortin Road, North Kingstown, Rhode Island (T.P. 47). The transcript will also reveal at page 21 that the induction notice sent to appellant on January 24, 1966 was in fact sent by registered mail, with request of return receipt, and further that the said order was in fact received and signed for by appellant's mother, Grace Ellen Stiles (T.P. 48). The transcript will also reveal, that on May 17, 1963 appellant mailed to his Local Selective Service Board correspondence indicating change of address for the summer to 10 Gorgas Lane, Oakridge, Tennessee, and containing a request for a new Selective Service card (T.P. 64). In addition, and most significant, the transcript will reveal that on January 17, 1966, the appellant directed communication to the Local Selective Service Board indicating that he was in fact leaving for a vacation trip of a month or so, and that he would in fact send postal cards (T.P. 75). The transcript will also reveal that on February 11, 1966 appellant communicated with his Local Draft Board from Knoxville, Tennessee, indicating that he would furnish an address as soon as one was obtained (T.P. 77). The transcript will also reveal that on February 15, 1966, appellant communicated with his Local Draft Board and indicated an address of Lista DeCorreos, Vera Cruz, Vera, Mexico, and requested a new draft card (T.P. 79). Appellant was scheduled for induction into the military forces of the United States on March 9, 1966. The transcript also indicates that appellant received the induction notice calling for induction into the military forces of the United States on March 9, 1966, upon his return on March 15, 1966 (T.P. 312).

Questions Presented

1. Can appellant be convicted of violation of an order to report for induction, without a clear showing of culpable intent or an intent to evade the law?

2. Can appellant be convicted of failing to obey an order to report for induction, said notice having been received by a person other than appellant, which was not delivered to appellant until a time after he was required to in fact report for induction?

3. Can appellant be convicted of failing to report for induction, said notice to report for induction being sent to appellant by the Draft Board after the appellant had in fact advised the Draft Board that he would not be at the address of appellant known to the Draft Board, but that appellant would in fact advise the Draft Board of his address?

4. Must not the Draft Board make use of all data available to it with reference to address of appellant, prior to issuing order to report for induction?

5. Is not a representation to the Trial Court on the record by prosecuting attorneys that no prosecution is recommended, in effect a motion to dismiss the indictment, which in fact must be considered by the Trial Justice?

6. Is not the authority of the person issuing an induction notice open to question at the trial level, and does limitation of cross-examination in this specific area, by the Trial Justice amount to reversible error?

7. Is not the matter of suitability for service in the Armed Forces of the United States, open to question at the trial level, and does limitation in cross-examination in this specific area amount to reversible error?

8. Can the burden of proving sanity of appellant beyond a reasonable doubt, the defense of insanity having been raised and placing insanity in issue, be sustained when the only rebuttal witness offered by prosecution indicates the existence in appellant of emotional disturbance?

ARGUMENT

There is no question that appellant failed to report for induction into the armed forces of the United States. The Local Board located at Westerly, Rhode Island, did in fact order your petitioner to report for induction. The communication sent to the petitioner was in the normal form sent to all other prospective inductees into the military forces of the United States, from this area. Your petitioner does not challenge the right of the Selective Service System to in fact order persons subject to the provisions of the Universal Military Training and Service Act to report for service in the Armed Forces. It is a foregone conclusion that this authority exists, and this authority is in no way being questioned by petitioner. Additionally, it is well settled in the statutory and case law of the United States that an induction notice may not in fact be collaterally attacked or reviewed by any person in the Courts. Your petitioner is not contesting the classification that he in fact received by the Draft Board strictly charged with processing his induction notice. Quite to the contrary, no reference is made to the classification of the petitioner in the instant

case. The normal Selective Service rules and regulations apply, and your petitioner concedes the right of the Selective Service System to classify him in the category in which it did in fact classify him. Your petitioner does, however, submit that pursuant to the statutory law of the United States, more specifically 50 U.S.C. App., §454, "No person shall be inducted into the Armed Forces for training and service or shall be inducted for training in national security training corps under this Title (Section 451-454) (455-471) of this appendix until his acceptability in all respects, including his physical and mental fitness has been satisfactorily determined under the standards prescribed by the Secretary of Defense. . . .". In addition, your petitioner respectfully submits to this Court that a right of attack does exist along these lines. In addition, your petitioner respectfully submits and urges upon this Court that the authority of the persons signing the induction notice to so sign, may in fact be challenged, and that a challenge in this area is completely proper. *United States* v. *Lawson*, 337 F.2d 800. Your petitioner further submits to this Honorable Court that the Trial Justice committed reversible error in severely limiting counsel for defendant to cross-examine witness Thelma Chase Taylor. The trial transcript, beginning at page 55 and continuing to page 61 indicates the attempt on the part of counsel for petitioner to explore this area, with no success. The trial transcript at page 57 indicates,

"Q. Suppose I ask you again. Whom were you appointed by?

A. That is what I thought you asked me, and I am not sure.

Q. You are not sure?

A. Well, I am not sure whether it was Colonel Wilson, the President of the United States, or General Hershey.

Q. Were you appointed for a term?

A. No, I would not say for a term.

Q. Your answer would be No?

A. No.

Q. Did you receive any certificate of appointment or anything?

Mr. Gearon: Your Honor, I don't see the relevancy.

The Court: What is the materiality of this, Mr. Rogers?

Mr. Rogers: The materiality: I would like to establish whether or not this woman is in fact the clerk of the Local Draft Board.

The Court: She has testified she has been clerk of the Local Draft Board since 1950. And some of the documents already in evidence indicate she is the clerk, don't they?

Mr. Rogers: They bear the signature of the witness and they use the word, 'clerk', your Honor. And I respectfully submit she may or may not be the clerk.

(58) The Court: Frankly, I don't see the materiality of this line of inquiry.

Mr. Rogers: My point, your Honor, being she may or may not have authority to sign certain documents under the Selective Service Act.

The Court: Absent any showing of any evidence she is or is not, I am not going to restrict the inquiry on that score. This lady has served as clerk

of that Board since 1950. I think we had better be realistic here.

Mr. Rogers: Might we have the question?

(Last question read by reporter as follows:

'Did you receive any certificate of appointment or anything?')

A. I believe I have an appointment, a certificate of appointment. I am sure Colonel Wilson can identify me.

Q. So then your answer is you do have some type of certificate?

A. Yes, I do.

Q. To the best of your knowledge, are you appointed for a term or not?

A. No.

Q. You are not appointed for a term. I see.

Now who are the members of the Draft Board No. 4 in Westerly, do you know?

Mr. Gearon: Your Honor, I am going to object to (59) this. I don't see the materiality or relevancy.

The Court: I don't either. What is the materiality of who are the members of Local Draft Board No. 4?

Mr. Rogers: May it please the Court, it might be the members of the Local Board gave to the clerk of this Board authority to send induction notices, et cetera, out.

Mr. Gearon: Your Honor, the record is not subject to collateral attack.

The Court: No, I think not. I will sustain the objection to any inquiry along this line.

Q. Do you customarily sign induction notices?
A. I do.

Mr. Gearon: Objection again, your Honor. I am going to object again, your Honor. The only way the record can be attacked is by an appeal to the Draft Board of Appeals. The record cannot be attacked collaterally in this examination.

Mr. Rogers: If it please the Court, I am not collaterally attacking anything other than the induction notice itself. And it is not a collateral attack, your Honor; it is a frontal attack. And I respectfully urge upon the Court that the question is certainly germane to whether or not this defendant, who is charged with failing to obey an induction notice, is in fact required to obey an induction (60) notice that may or may not be valid.

Mr. Gearon: Again, your Honor, the validity can only be attacked by appeal.

The Court: I know of no requirement of the Draft Board that each and every member of the Draft Board should sign a notice to the registrant. If it is signed by the Clerk. I think that is sufficient.

Mr. Rogers: May it please the Court, my point is not that it must be signed by anybody—the membership of the Board. My point is quite different, your Honor.

The Court: What is your point?

Mr. Rogers: If I might have the question read back, your Honor.

(Last question and answer read by reporter as follows:

'Q. Do you customarily sign induction notices?
'A. I do.')

Mr. Rogers: My point being, your Honor, that perhaps this witness does not have authority to sign an induction notice. Therefore, an induction notice signed by her would in fact be invalid, your Honor.

The Court: That may be your point, but I don't (61) think it is well taken. The record of the Board indicates notice was sent. The witness has so testified. It is not open to collateral attack. I will sustain the objection."

Your petitioner submits that the Trial Justice ruled incorrectly, and unnecessarily limited the petitioner from inquiry into this area. Your petitioner further submits that the authority to sign the induction notice itself was germane, and that the Trial Justice failed to recognize the validity of the contention of petitioner, and severely limited counsel for petitioner in this area.

With reference to the chronological order of events in the instant case, time is rather important. Your petitioner was registered with the Selective Service System on April 18, 1963 and gave an address of 10 Fortin Road, Kingston, Rhode Island. The record will indicate that on May 17, 1963 a communication was sent to the Draft Board and was received by said Draft Board on May 20, 1963 indicating a change of address for the summer at 10 Gorgas Lane, Oakridge, Tennessee. This data may be found at Trial Transcript page 37. The record will indicate also at Trial Transcript page 48 that on January 17, 1966 your petitioner directed a communication to his Draft Board, indicating that he would in fact be leaving town, and that he would in fact keep them advised of his address. Your petitioner's

counsel submits that while the communication directed to the Local Draft Board under date of January 18, 1966 may well be a very poorly drafted letter, and may even contain objectionable language, it is in fact indicative of the existence on the part of the Draft Board of a communication indicating a change of address prior to the issuance of an induction notice. The letter was in fact introduced into evidence and so remained in evidence. This letter in and of itself clearly indicates existence of notice on the part of the Selective Service System of a change of address prior to sending notification to petitioner to report for induction. The same is contained on Trial Transcript page 47.

> "(Letter date stamped January 18, 1966, signed 'Phil Stiles' and accompanying envelope addressed to Rhode Island Local Board No. 4, Westerly, R.I., (47) marked United States Exhibit No. 6)
>
> Q. Would you read this, please, Mrs. Taylor?
>
> "Phil Stiles
> 10 Fortin Road
> Kingston, R.I.
>
> "Dear Sirs,
>
> "Your threatening letters continually arrive, telling me exactly what to do and informing me of the penalties for not complying with your directives.
>
> "In response, I can only repeat my previous assertions that I am unwilling to be a part of the organized murder and threat of murder which is the basis of any army.
>
> "There are better forms of communication than impersonal printed forms filled with orders and threats. If man is to function socially as something more than a

self-destrictive machine, the improvement of communication is of great importance. If you wish to discuss these matters further perhaps we could arrange a mutually convenient time and place.

I hope that you folks can rise above crude attempts (48) at manipulation and engage in some constructive interaction.

"love,

"Phil Stiles.

"PS I am going soon to take a vacation trip of a month or two. I tell you this because my leaving town with no definite forwarding address might otherwise seem evasive. Don't worry, I'll send you post cards letting you know how I'm getting along."

The record will indicate that draft notice was sent to your petitioner on January 24, 1966. The Trial Transcript page 76, says:

"Q. The date of the Selective Service questionnaire went on file as what, Madam?

A. May 8, 1963.

Q. And the date of your induction notice is January 24, 1966. Correct?

A. Yes.

Q. At any time between the date of putting the questionnaire on file and issuing the induction notice, did you have any knowledge of any address other than 10 Fortin Road, Kingston, Rhode Island?

A. Yes, we did.

Mr. Rogers: Excuse me, your Honor.

• • • • •

(82) Q. And you have testified that you received information relative to the whereabouts of Philip J. Stiles from time to time. Is that right?

A. That is right.

Q. But no entries of those are made in this record. Is that right?

A. That is correct."

Your petitioner further submits that other attempts were made to keep the Draft Board advised of his whereabouts. Your petitioner respectfully submits the Trial Transcript will clearly indicate that he was not at any time aware of an induction notice being sent to him in such time as for him to be able to in fact comply with it. The letter previously referred to in this brief, more specifically, the letter under date of January 18, 1966 indicates that he will in fact keep his Draft Board advised. The language also indicates in the letter that he is aware that leaving town without a definite forwarding address might seem evasive. This letter it is respectfully submitted, should in fact be read in conjunction with communications directed to the Draft Board subsequent thereto. More specifically, post card postmarked Knoxville, Tennessee, February 11, 1966, to the Selective Service System, Local Board No. 4, Westerly, Rhode Island, and signed Phil Stiles, which is United States Exhibit No. 7. This communication is found in Trial Transcript at page 50 and clearly indicates an intent to comply with the self-imposed restriction of keeping his Draft Board advised. Additionally, the attention of this Honorable Court is directed to communication under date of February 16th, 1966, in the form of a post card, sent from Mexico to the Draft Board at Westerly, Rhode Island, indicating not only a change of

address, but requesting that a new draft card be sent to petitioner to facilitate his return to the United States. Your petitioner fully realizes that these communications are in fact dated subsequent to the induction notice. But your petitioner further and respectfully submits and urges upon this Court that the Trial Transcript clearly indicates in every manner possible that the petitioner was not in fact aware of the existence of any order, until he returned home to Kingston, Rhode Island, well after the date set for induction in the induction notice itself. The prosecution of this case made much of Federal Regulations, more specifically, Section 1641.3 of the Code of Federal Regulations. The prosecution indicates that and, probably correctly so, that it is the duty of a registrant to keep his draft board advised as to his address. Your petitioner has no quarrel with this regulation, nor with the prosecution citing this regulation. However, your petitioner respectfully urges upon this Court the fact that he has in fact complied. In addition, your petitioner respectfully submits that his conduct has clearly manifested in the Trial Transcript is indicative of the fact of an intent and an attempt to in fact comply. In *Bartchy* v. *United States,* 319 U.S. 484, which was a matter addressed to the Fifth Circuit Court of Appeals, this subject was in fact discussed. The case it would appear, stands for the proposition that it is in fact the duty of a registrant to fully advise his draft board of his address and the location where mail will in fact reach him. This case does, however, it is respectfully submitted, not in and of itself require a registrant who is in fact expecting an induction notice, to remain in any one place, or to notify the draft board of his every move or of every temporary address. The case, it is respectfully submitted,

seems to stand for the proposition that the requirement of the rule to keep the draft board advised of location is in fact satisfied if in fact the registrant in good faith provides a chain of forwarding addresses by which mail sent to the address which is furnished to the draft board may be by the registrant reasonably expected to come into his hands in time for compliance. In the instant case, it is respectfully submitted, the petitioner has in fact met all of the requirements of the *Bartchy* case. In the instant case, he has communicated on numerous times, and had a prior history with the draft board of notifying them of change of address when no induction notice was in fact anticipated. In addition, the case of *United States* v. *Hoffman,* 137 F.2d 416 also seems to stand for the proposition that there must be more than a mere failure in situations such as these, that a very essential element is knowledge, which is the usual criminal intent. In the area of notice, it is respectfully urged upon this Court that the case of *United States* v. *Thompson,* 253 F. Supp., 535, is also of interest. In that case, the defendant was in fact found guilty of violation. However, it is respectfully submitted that the violation in that case was a knowing violation after notice. The case of *United States* v. *Norris,* 341 F.2d 527, also addresses itself to the area of knowledge. The area of notice, with reference to receipt of induction notices has in fact been discussed by the Courts and the subject matter has in fact been entertained, and the rule has been made very clear. In the American theory of jurisprudence, a person ought not be convicted of an offense that was or could be committed without knowledge on the part of the person charged with violation of the law. In the case of *United States* v. *Norris,* 341 F.2d 527, the area of knowl-

edge was in fact faced. In that case, it appeared that a finding of guilty was in fact warranted, because the Court felt that the defendant knew of the existence of an order and had in fact deliberately failed to obey. It is quite reasonable to rationalize that the case seems to stand for the proposition that no person should be convicted because of a mistake, inadvertence, or other innocent reasons, but rather should be convicted only on a finding of culpable intent or an intent to evade the law. It is respectfully urged upon this Court that petitioner falls clearly into this category. The Trial Transcript indicates that the induction notice that the petitioner is charged with failing to comply with was sent to an address that the Draft Board knew, or reasonably should have known, was not an accurate address. In addition, it was in fact received by a person other than petitioner, and it was in fact received at an address other than the address to which the notice was in fact mailed. Not only was it received by a person other than the registrant prior to the date set for the date of induction, the return receipt which is in fact in evidence was in fact returned properly to the Draft Board so that clearly knowledge did in fact exist on the part of the Draft Board that the registrant, who is herein your petitioner, did not in fact receive notice of induction. It is respectfully submitted that the Draft Board knew, or reasonably shown have known, that there was an irregularity with reference to this particular induction notice. Your petitioner is not attempting to place an additional burden upon the Draft Board, but your petitioner is respectfully urging upon this Court that the Draft Board certainly was aware of an irregularity, and that the irregularity was not caused in any manner or form by your petitioner. It is also re-

spectfully urged upon this Honorable Court that your petitioner ought not be convicted of this offense which is in fact a crime, when the entire situation could have and should have been obviated upon receipt of the registered mail certificate, bearing signature of a person other than the registrant. The fact that registrant herein your petitioner, was not aware of the existence of this order until his return to the United States subsequent to the date set by the Draft Board for induction is found in numerous places throughout the Trial Transcript from testimony of many witnesses. All of this testimony stands uncontradicted, and it is graphically obvious that there was absolutely no knowledge on the part of your petitioner of the existence of this order. It is therefore respectfully urged upon this Court that the petitioner herein has in fact been convicted, and in fact sentenced to serve a term of years in prison for an offense that did in fact take place totally and absolutely without the knowledge of the defendant, herein your petitioner. The spirit and theory of American law is predicated upon equality, justice and freedom. It is respectfully urged upon this Court, the highest tribunal of the free world, that the conviction ought not be sustained, and should in fact be reversed because there is a glaring absence of knowledge on the part of your petitioner. Further, your petitioner respectfully urges upon this Honorable Court that to allow a conviction and a jail term to be imposed for a violation of the law by a method that does not require knowledge and notice of the violation on the part of the defendant, is contrary to the prevailing theory of jurisprudence in the United States of America. Another case of significance is the case of *United States* v. *Dailey*, 139 F.2d 7. The Court in hearing and deciding that matter

took a position of significance to this case. On page 8 of the so-called *Dailey* case, the Court seems to take the position that the issue before the Court was if or not the Draft Board issued an order, and if or not the defendant got the notice. The Court seems to say that this is in fact the real issue. It would appear, then, that the question of notice includes two parts. Number one was the notice sent at all. And number two, was the notice in fact received by the person charged with violation of the law. It is graphically obvious in this case that there was no receipt of the notice timely enough by the petitioner to in fact avoid criminal violation. Parts of the Trial Transcript of extreme significance to your petitioner are contained on page 282 and following,

"GRACE ELLEN STILES, Sworn.

Direct examination by Mr. Rogers:

Q. Mrs. Stiles, you know the defendant in this case.

A. Yes, sir.

Q. Is there any relationship between you and the defendant?

A. He is my son, sir.

Q. He is your son. Mrs. Stiles, where do you live?

A. At 10 Fortin Road, Kingston.

Q. That is in Rhode Island?

A. That is in Rhode Island, yes.

Q. Were you living there, at 10 Fortin Road, Kingston, Rhode Island, on January 25, 1966?

A. Yes.

Q. Did you ever receive any communication from anywhere for your son at that address.

A. Yes.

Q. More specifically, did you ever receive any registered mail at that address, addressed to your son, Phillip Stiles?

A. Yes.

Q. I ask you—

A. (Continuing) We maintain a post office box.

The Court: A little louder, please.

The Witness: We maintain a post office box for convenience, but it is the same address.

(283) The Court: It is the same address.

Q. Referring you to United States Exhibit No. 2, Mrs. Stiles, with a receipt appended, do you recognize this signature on the second line?

A. Yes, sir; that is my signature.

Q. Would you read it, please?

A. It says: 'Grace Ellen Stiles, 10 Fortin Road, Kingston, Rhode Island.'

Q. Would you read the date delivered, Mrs. Stiles?

A. '1/25/66.'

Q. Did you in fact sign this receipt?

A. Yes, sir.

Q. Have you ever seen Government's Exhibit No. 2 before?

A. This paper?

Q. Yes.

A. I don't believe so, sir, because I did not open the thing that I signed for.

The Court: Can't hear you, Madam.

The Witness: I don't believe that I have ever seen the paper because I did not open the envelope that I signed for. I received the envelope, signed for its receipt. I did not open it.

Q. Do you recall January 25, 1966?

A. Yes, I do.

(284) Q. At that time was the defendant in this case, your son, Phillip J. Stiles, at 10 Fortin Road in Kingston?

A. That was his residence but he had gone away for a holiday, a visit with some friends.

The Court: He had what?

The Witness: He was not at home. He had gone for a visit with some friends.

The Court: For a visit with some friends?

The Witness: Yes, sir.

Q. And Mrs. Stiles, do you know of your own knowledge where he went?

A. I wasn't with him. He said that he was going to visit some friends in New York City. I cannot give you the address. And he went from there on to visit some friends in other places. And before he did come back he had visited Mexico. But I believe at that time he must have been in New York City, according to what I understood.

Q. Can you recall approximately when he left for this visit?

A. It must have been about the middle of January.

Q. About the middle of January?

A. Yes.

Q. By the middle, do you mean January 15th.

A. Well, the 15th. It was before the 25th.

Q. Can you recall approximately when your son returned to 10 Fortin Road, Kingston?

A. His birthday is March 23rd, and it was shortly before that. I would say between the 5th and 20th of March sometime.

Q. Was your son at 10 Fortin Road at any time between, say, January 15, 1966 and February 9, 1966? Your answer?

A. No.

Q. You say that he returned home after February 9, 1966.

A. Yes.

Q. And again when do you think he returned?

A. It was in March.

Mr. Gearon: Object to the form of the question; when do you think he returned.

The Court: It is repetition. She has already said her best recollection was between the 5th and 20th of March.

Q. Was it closer to the 20th, Mrs. Stiles, of March?

A. My best guess would be about the 15th of March.

Q. About the 15th of March. And at that time what did you do with mail that you had collected for him?

A. I had collected it in a drawer in his room, and I gave it to him; told him where it was and gave it to him."

It is respectfully submitted that this position of no notification was in fact supported and buttressed by government witnesses. Another interesting case in this area of knowledge and notice is the case of *United States* v. *Mitchell,* 246 F. Supp. 874. It would appear that this case stands for the proposition that the issues are whether or not a valid order was issued by the Draft Board and whether or not the defendant was in fact given notice of the order and was a failure to report pursuant to this notice a willful and knowing violation. It appears then that

the question of whether or not a person received the notice is in fact most important. Your petitioner respectfully submits to this Honorable Court that it is clearly conceivable that a person can in fact attempt to avoid an obligation, and to very frankly hide behind the requirement of notice. This device or artifice could be resorted to by any person, and during the trial of this case, it is very obvious that petitioner's conduct prior to the date of indictment is such as to rule out this possibility. It is respectfully submitted to this Honorable Court that all of the conduct and all of the facts surrounding the conduct and the violation should be taken into consideration by this Honorable Court. Your petitioner respectfully prays that this Court will see clearly that he has not wilfully and knowingly attempted to evade anything. Quite to the contrary, while the communications may not have been in the best form, or content, their purpose when applied to the law of the United States, was in fact achieved. The case law of this country indicates that a person should not be penalized for mistake or inadvertence. It is respectfully submitted that mistake and inadvertence does exist in this situation and that very frankly and very honestly the mistake was made by the Draft Board. In the final analysis, they had the ability to prevent the mistake from taking place, in the first instance. In addition, it is respectfully urged upon this Honorable Court that your petitioner has in fact been sentenced to serve a term of years in a prison for this mistake. Another interesting case in this area which was decided during the year 1965, is the case of *United States* v. *Price,* 240 F. Supp. 390. In the so-called *Price* case, the defendant failed to report on time and was in fact properly convicted. But again, it is submitted that the Court drew its attention to the fact that there must be ample notice of the

fact that defendant did in fact know of the order. The case of *United States* v. *Haug*, 150 F.2d 911, is also important. In that case the defendant was also convicted for failure to keep the Draft Board advised of his address where mail could reach him. It is interesting to note, however, that the Court, on page 913, seemed to say that even though a certain section of the act made it a crime to neglect to perform a duty required by the regulations, when the accused failed to do so knowingly, and it would not have been a crime for the defendant to fail to fill out and return a questionnaire even if it had been properly addressed if it never reached him. This case seems to stand as further testimony that actual receipt is in fact required. In the appellant's case, he could not have reasonably been expected to report for induction if he did not in fact receive the notice.

Your petitioner put into issue sanity by filing a plea of not guilty by reason of insanity in addition to a previously filed plea of not guilty. Your petitioner submits that insanity and suitability for service were in fact in issue before the Trial Court. Your petitioner further submits that the record of this case will indicate that your petitioner filed with the Trial Court a motion for examination as to suitability of service on October 31, 1966. His suitability for induction into the Armed Forces was extremely important, and a rather unusual motion was in fact filed in his behalf in this area. The motion is part of the record of this case, and that the motion contains a request for examination and that the case be removed from the jury trial calendar until the examination had in fact been completed. This motion was argued in the United States District Court for the District of Rhode Island, and the motion was denied and dismissed by the Trial Justice pur-

suant to an order of December 1st, 1966. The hearing on said motion was held on November 21st, 1966. The Trial Transcript indicates clearly that the Trial Justice was in fact aware that an examination was in fact conducted by medical officers of the United States Navy, and it is respectfully submitted, that this examination was not made pursuant to the motion made on behalf of the petitioner, but was a voluntary examination at the urging of counsel for petitioner, outside the motion. It is respectfully requested that this Honorable Court take cognizance of the fact that suitability for service was in fact in issue from the very outset of this case. The Trial Transcript will indicate that the Trial Justice had knowledge on the record that your petitioner was unfit for military service.

"First Day

Tuesday, January 17, 1967

2:00 P.M.

Mr. Rogers: If it please the Court,—

The Court: Do you wish this to be given to the reporter?

Mr. Gearon: Yes, your Honor, I would like to have it taken down.

The Court: Suppose you come up to the bench then.

(Bench conference as follows:)

Mr. Rogers: If it please the Court, after pretrial conference, after reporting to the courthouse and being advised—

The Court: Please speak out of the hearing of the spectators.

Mr. Rogers: After being advised to report here for trial at 2 o'clock here this afternoon, myself and John Notte, Esq. had a conference with the United States District Attorney for this District, Mr. Frederick Faerber, Esq., who advised me—and I represent to this Court—in the event that my client, who stands indicted for failure to report for induction were in fact to submit to induction into the military forces of this country, and were (3) found by the Selective Service Authority to in fact be unacceptable, that the United States Attorney's office would in fact move in open court to dismiss the indictment against the defendant.

I make those representations to this Court as my best recollection of the conference with Mr. Faerber, and I ask Mr. Notte to state for the record whether or not this is a fair and accurate representation of the conversation we had.

Mr. Notte: This is a fair and accurate representation, your Honor.

Mr. Gearon: Your Honor, the position of the United States Attorney is essentially what Mr. Rogers said. However, it is felt, for the purposes of this record, that the reason for so doing is that the Selective Service takes the position that if a person would report for induction, it is better to have them so report than to be incarcerated in jail in the event of a conviction upon this type of case.

However, because of this case and the situations and the examinations made by psychiatrists, I feel it should be placed in the record one of the conisderations for the Government taking this position is that although

the man (4) is charged with failure to report for induction—which does not necessarily mean he will become a member of the Armed Forces—it is directing him, as a citizen of the United States within military age, to submit to an induction and physical examination to determine his eligibility for the Armed Forces. That is what this indictment charges him with: failure to report for induction.

The Court: I thought it charged him with failure to report for examination.

Mr. Gearon: No, failure to report for induction, submit to the induction in the Armed Forces. But because of the uniqueness of this situation and in view of the fact that there has been psychiatric examination of this defendant, and a psychiatric examination by three doctors at the Naval Base in Newport on Friday, January 13, 1967 wherein the conclusion at the end of the examination, signed by the three physicians, psychiatrists,—their comment is as follows:

> 'From the above history and findings it is the opinion of this board of psychiatric examiners that this person was at the time of any alleged offenses so free from mental defect, disease or derangement as (5) to be able concerning any particular acts charged to adhere to the right. He possesses sufficient mental capacity to understand the nature of any proceedings against him and intelligently to conduct or cooperate in his own defense. It is also the opinion of this board that this person is unfit for military service.'

And it is signed by E. A. Vadeika, Frank M. Moscarillo, A. H. Schwartz.

I have a further examination conducted by Max Faintych.

The Court: Would you gentlemen be good enough to make clear to me what this is all about?

Mr. Gearon: This is the position: that if this man submits to induction, in all probability he will not be acceptable anyway. But in view of the fact that he is willing to go down for induction, the Government would take the position—and the United States Attorney has recommended—that there would be no further prosecution because it would really in effect —if he were a person who could be eligible for the Armed Forces, there would (6) be a point in going forward with it. But insofar as this person, while charged with failure to report for induction, which is a serious crime,—

The Court: Are you ready to go to trial or aren't you?

Mr. Gearon: We would continue it if this man—

The Court: I see no need of it. Let's try this case and get it behind us. That is my position. Either he is guilty or he isn't.

(Bench conference concluded.)

(Jury impaneled.)"

It is respectfully urged upon this Honorable Court that the Trial Judge had special and peculiar information at his disposal, and that he failed to exercise the proper discretion. The United States Attorney clearly indicated that this person was in fact unfit for military service, and read into the record the findings of the physicians. In addition, the United States Attorney clearly indicated on the

record that in view of the fact that your petitioner was willing to go down for induction that he would recommend there be no further prosecution. Whereupon, the Trial Judge indicated that the case must proceed to trial. Your petitioner submits that the Trial Judge had control of the situation at that time and failed to exercise the proper discretion. The peculiar and special knowledge of the Trial Judge is also a very important matter in the area of examination of medical witnesses on the part of petitioner's counsel. Having this special and peculiar knowledge, the Trial Judge severely limited petitioner's counsel from examination of physicians in an area dealing with suitability, when the Trial Judge in fact knew that the petitioner was unfit for military service and had been declared so by officers of the United States Navy. Your petitioner respectfully submits that the statutory law of the United States, pursuant to 50 U.S.C., App., §454, clearly indicates that no person can in fact be indicted into the armed forces for training and service until his acceptability in all respects including his physical and mental fitness has been satisfactorily determined under standards prescribed by the Secretary of Defense. The Trial Justice had peculiar knowledge of the facts surrounding this case and peculiar knowledge as to suitability of this petitioner for service in the Armed Forces of the United States and this denial of the motion for physical evaluation and severe limitation of examination and discussion in this area operated to the prejudice of petitioner. It is again respectfully urged upon this Court that your petitioner stands not only convicted of a crime but sentenced to two (2) years in a federal penitentiary, and yet he is the same petitioner of whom it was clearly obvious from the outset that he was unfit for mili-

tary service after submitting voluntarily to an examination by physicians of the United States Navy, and all of this information was available to the Trial Judge, and all of it is contained in the record of this case.

The defense of not guilty by reason of insanity was raised by the defense at the trial level in addition to the plea of not guilty which was entered at the arraignment of petitioner. Your petitioner humbly prays this Court to exercise its supervisory powers over all of the Courts in the United States to clarify an area of great concern to every single person in the United States, particularly petitioner. Nowhere in the world is the enunciation of the doctrine of separation of powers and supremacy of the judiciary practiced but in the United States of America. Our history indicates, properly so, that there must in fact be a judicial determination of questions, and when the judicial determination is made, that is in fact final. Our constitution provides for but one court, that is the United States Supreme Court, to which this petition is in fact addressed. Our constitution says also that there shall also be such inferior courts as the Congress shall, from time to time, create. Clearly, the supremacy of the United States Supreme Court exists in the statutory law of this country, in the constitution of this country, and in the case law of this country, where it was clearly established in *Marbury* v. *Madison.* There is no country in the world in which a humble citizen can in fact appeal and know with full certainty, in fact full, absolute and total certainty, that if said Court rules that the ruling of said Court will in fact be the law of the land. There is in existence in the United States of America great controversy as to precisely what rule will in fact be the rule with relation to a determina-

tion of sanity or insanity. The writers, the reporters, the practitioners, discover rapidly that there are many, many rules, many criteria and many standards for a determination of the very simple concept of criminal responsibility and insanity. There is no doubt in the mind of petitioner or of petitioner's counsel that clearly power exists in the United States Supreme Court in a final enunciation and definition of what the rule shall in fact be in these United States with reference to this particular subject. It is respectfully urged upon this Court that this is in fact a proper case and that a tremendous need exists in the United States for enunciation of doctrine, as to precisely what rule we shall follow. Petitioner urges upon the United States Supreme Court that, pursuant to the authority vested in them and the responsibility for the care, comfort, protection and well-being of the citizens of the United States, enunciate clearly for once and for all what criterion will be followed in this country in this particular area. Petitioner cites the case of *United States of America, Appellee* v. *Charles Freeman, Appellant,* No. 182, Docket No. 29688 argued before the United States Court of Appeals for the Second Circuit on December 15, 1965, and decided by that Honorable Court on February 28, 1966, and cited as 357 F.2d 606 before Waterman, Kaufman and Hays, Circuit Judges, excerpts of which your petitioner respectfully will quote verbatim for this Honorable Court. Beginning at page 613 of the above cited case, the language reads:

"It need scarcely be observed that the sufficiency of the M'Naughten rules as a test of criminal responsibility would not be open to question to us if the Supreme Court had definitely spoken on the issue. Bound by Supreme Court precedence we would of course be compelled to follow any

decision of that body which adopted M'Naughten as the exclusive criteria in the federal prosecutions, regardless of our dissatisfactions of such a test. As a distinguished attorney and former Secretary of State has recently and perceptively observed in other context, Federal judges are hardly in power to satisfy a mere "desire for change in the law in accordance with the decider's own conception of right. (They) may conscientiously be seeking to administer justice, but it is personal justice. . . . The justice of Louis IX or Harun Al Rashid, not that described on the lintel of the Supreme Court Building, 'Equal Justice Under Law'. Despite the Government's arguments to the contrary, we do not believe that the Supreme Court has placed its stamp of approval on M'Naughten and we find the cases cited for this proposition to be readily and clearly distinguishable. Thus *Davis* v. *United States,* (1), 160 U.S. 469, 16 S.Ct. 353, 4 L. Ed. 499, (1895) and *Davis* v. *United States,* (2), 165 U.S. 373, 17 S.Ct. 360, 41 L. Ed. 750, (1897) do not represent a square holding after the sufficiency of M'Naughten. The former was concerned with the issue of burden of proof. . . . rather than the applicable standards. . . . While the matter primarily involved the claim that the trial court charge was so narrow as not even to give the defendant full benefit of M'Naughten." Neither case in short, raised the question whether M'Naughten should be replaced or supplemented by alternate cases. In addition, on page 614 of the above cited case, the Court said,

"Our conclusion is that the Supreme Court has not definitively spoken on the issue is in accord with that of a substantial number of courts of appeal which have considered the question. However, the Circuit Court of Appeals for

the Ninth Circuit found only that the Supreme Court or Congress could modify M'Naughten, *Sauler* v. *United States,* 241 F.2d 640 (Ninth Circuit), certiorari denied 354 U.S. 940, 77 S.Ct. 1405, the District of Columbia, the Third and Tenth Circuits adopted a contrary position. After an exhaustive analysis of the decisions in this area, Chief Judge Biggs, who has for many years advocated change and has offered exceptionally scholarly works on the subject, including his trail blazing dissent in *United States ex rel. Smith* v. *Baldy,* 192 F.2d 540 (Third Circuit), 1951, concludes that the Third Circuit need not feel 'constrained to adhere to and uphold the M'Naughten rules.' The *United States* v. *Currens,* 290 F.2d 751, 771 (1961), Chief Judge Murrah, who has been an appellate Judge for over a quarter of a century and who has been in the forefront of judicial and administrative reforms, speaking for the Tenth Circuit, observed that since criminal responsibility was a rule of decision in the Federal Courts based upon common law concepts, it was always appropriate to "re-examine and re-appraise it". *Wyon* v. *United States,* 325 F.2d 420, 425 (1963) certiorari denied, 377 U.S. 946, 84 S.Ct. 1354, 12 L. Ed. 1309 (1964). It seems also significant that in the face of a proliferation of cases in the area of criminal responsibility, the Supreme Court has consistently refrained from granting certiorari to consider this issue, despite inconsistent results among state courts and Federal circuits. At least one writer has suggested that the Supreme Court's inaction in this area is not mere coincidence, but is motivated by a desire to encourage the circuits to discuss and develop alternative tests before making a definitive ruling. After a considerable reflection on the issue presented, we therefore conclude that we can-

not escape our duty to consider whether the M'Naughten rule of M'Naughten's rules augmented by the "irresistible impulse" test should continue to remain the test of criminal responsibility in this Federal jurisdiction."

It is respectfully submitted, therefore, that this Honorable Court has ample authority to consider the application of other tests and is not in fact bound by any single rule, and that in fact the United States Supreme Court and only the United States Supreme Court can in fact lay down what rule shall in fact be followed. The mental capacity of the petitioner in the instant case, became, was and is important in this case. It has been alleged and substantiated by a qualified psychiatrist who treated the petitioner, a qualified psychologist who examined the petitioner and verified by physicians of the United States Navy that in fact an emotional disturbance did in fact exist. It is respectfully urged upon this Court that petitioner understands full well and in fact agrees with the proposition that sanity or insanity is a question of fact for the jury. The jury in this case rejected the defense of insanity by finding the defendant guilty as charged. It is respectfully urged upon this Court that petitioner's request for instructions made upon the Trial Judge were in fact granted in that the test applied and the charge given, which is in fact the law of this case, was a test other than the M'Naughten rule. It is urged upon this Honorable Court that it is completely the feeling of the petitioner and counsel for the petitioner that the Federal District Judge for the District of Rhode Island is eminently qualified to hold his office, and is in fact eminently fair to all persons appearing before said Court. Additionally, it is urged upon this Court that the request for charge as filed by petitioner was in fact granted by the

Trial Judge. And the said charge is on file with the papers in this case. It was requested in the motion for charge that the so-called American Law Institute law rule be followed and the M'Naughten test in fact be abandoned. The test applied was, "A person is not responsible for criminal conduct, if at the time of said conduct as a result of mental disease or defect he lacks the substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." It is respectfully suggested to this Honorable Court that the Trial Justice in his wisdom granted the request for instructions and so instructed the Jury. It is respectfully urged upon this Honorable Court that such was in fact a proper charge and that such is in fact a proper law to be applied in the area of criminal responsibility with reference to insanity. It is respectfully urged upon this Court that the Jury while enjoying full latitude in discussion of questions of fact did not in fact arrive at a proper decision. The prosecution and defense medical witnesses clearly established on the record that your petitioner suffered from mental disorder of a chronic nature. Petitioner respectfully urges upon this Honorable Court that the Jury did not in fact understand the charge, and that the facts when applied to the law of this case namely the American Law Institute rule would not permit a finding of guilty. If petitioner had established only by petitioner's physicians that a defect existed, it would be one position, but here the evidence was uncontradicted on all sides that a mental defect of a chronic nature existed under the American Law Institute rule. Accordingly, it is respectfully urged upon this Honorable Court that pursuant to the supervisory authority vested in this Court and only in this Court that the American Law Institute rule be adopted throughout the United States.

Conclusions

It is respectfully urged upon this Court that for the reasons herein cited, that the conviction of your petitioner should in fact be reversed, and that the term of years in a federal penitentiary be eliminated as a necessary consequence thereof.

Respectfully submitted,

PHILIP JEROME STILES,
By his attorney,
CHARLES J. ROGERS, JR.

Certification

I, Charles J. Rogers, Jr., Esquire, of Providence, Rhode Island, make affidavit and say that I have in fact this 4th day of September, A.D. 1968 furnished a copy of the within brief in typewritten form to Erwin Griswold, Esquire, Solicitor General of the United States of America.

Respectfully,

CHARLES J. ROGERS, JR.

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No. 74

In the Supreme Court of the United States

OCTOBER TERM, 1968

PHILIP JEROME STILES, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The court of appeals affirmed without opinion.

JURISDICTION

The judgment of the court of appeals was entered on September 20, 1967 (A. 154). The petition for a writ of certiorari was filed on October 9, 1967, and was granted on May 6, 1968 (A. 155; 391 U.S. 903). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the jury's verdict that petitioner wilfully and knowingly failed to comply with an induction order issued by his local Selective Service Board.

2. Whether, in the circumstances of this case, the district court abused its discretion in refusing to postpone the trial so that petitioner's suitability for service in the Armed Forces could be determined by a physical examination.

3. Whether the trial court properly terminated a line of inquiry dealing with the authority of the clerk of the local Selective Service Board to sign induction notices before they are mailed.

4. Whether the evidence required the jury to return a verdict of not guilty by reason of insanity.

STATUTE INVOLVED

50 U.S.C. App. 462 provides in pertinent part:

(a) * * * any person * * * who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title * * *, or rules, regulations, or directions made pursuant to this title * * *, shall, upon conviction * * *, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both * * *.

STATEMENT

After a jury trial in the United States District Court for the District of Rhode Island, petitioner was convicted of knowingly failing to comply with an order "to submit to induction" issued by his local Selective Service Board, a violation of 50 U.S.C. App. 462. On March 17, 1967, he was sentenced to imprisonment for two years (A. 148, 149–150). The court of appeals affirmed without opinion (A. 154).

1. The underlying evidence is not in dispute. In October 1964 petitioner was given a 2–S classification (a student deferment) by his local draft board (A. 27–28). On November 9, 1965, having left college, he was reclassified I–A, and a notice of his classification was mailed to him on November 17, 1965 (A. 28). On November 29, 1965, he was ordered to report for a pre-induction physical examination but failed to do so. On December 21, 1965, he was ordered to report for a physical examination on January 6, 1966 (A. 28–29). Although there is no doubt that he actually received these notices, petitioner failed to report on either occasion. On January 11, 1966, petitioner was sent a notice by registered mail advising him that he had been declared delinquent because of his failure to appear for a physical examination on January 6 (A. 29, 63–65; G. Ex. 9). He accepted and signed for that notice on January 13 (G. Ex. 9). On January 14, 1966, he was ordered for a third time to report for a pre-induction physical, this one scheduled for January 20, 1966 (A. 30). Three days later (January 17), petitioner mailed a letter to his local board protesting the "threatening letters" which continued to arrive from the board "telling me exactly what to do and informing me of the penalties for not complying with your directives." He pointed out that he could "only repeat my previous assertion that I am unwilling to be a part of the organized murder and threat of murder which is the basis of any army."[1] This letter further

[1] In November 1963, petitioner had sent the local board a signed letter entitled "Selective Service Disaffiliation", pur-

advised the board that if it wished to discuss "these matters further perhaps we could arrange a mutually convenient time and place" (A. 48; G. Ex. 6). Petitioner added a postscript (A. 48):

> P.S. I am going to take a vacation trip of a month or two. I tell you this because my leaving town with no definite forwarding address might otherwise seem evasive. Don't worry, I'll send you post cards letting you know how I'm getting along.

Petitioner failed to appear on January 20 for the third scheduled physical examination, and a second delinquency notice was mailed to him (A. 30).

On January 24, 1966, the clerk of the local board sent to petitioner, by registered mail with return receipt requested, a notice to report for induction on February 9, 1966 (A. 30–32, 36–39; G. Ex. 2). The notice was addressed to petitioner at 10 Fortin Road, Kingston, Rhode Island, his last known address and the one he had designated in his most recent current information questionnaire (A. 26, 31–32, 38; G. Exs. 1, 2). The next day, petitioner's mother signed for and accepted delivery of the order (A. 113). Petitioner thereafter failed to report for induction as directed (A. 30–31, 40).

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porting to disaffiliate himself "from all the functions and process of the Selective Service Act" on the ground of his unwillingness "to participate in a system of violence, war and preparation for war." Attached to the document was his "Notice of Classification" card (A. 44; G. Ex. 5).

At no time, however, did petitioner seek an exemption from military service as a conscientious objector.

On February 11, 1966, two days after this failure to report, petitioner mailed a postcard to his local board from Knoxville, Tennessee, stating, "I'm still thinking about you, and will let you know as soon as I have an address" (A. 49–50; G. Ex. 7). On February 15, 1966, petitioner sent his local board a postcard giving a Mexican address "for the time being." On the postcard, he further suggested that it "would be nice if you could send me a new draft card, as having one would facilitate my return to the USA" (A. 51–52; G. Ex. 8). Petitioner did not again contact his local board.

During an interview with an F.B.I. agent on April 13, 1966, petitioner stated that he had received his induction notice only after returning from Mexico in the middle of March 1966, about a month after the te (February 9, 1966) on which he had been directed to report for induction; and that while he would be willing to report for a physical examination, he would not report for induction (A. 69–74, 76).

As a defense witness, petitioner's mother testified that petitioner had left home for a vacation some time after mid-January, saying that he was going to visit some friends in New York City, but giving no precise address. She admitted that she had signed for and accepted the envelope which contained the induction notice, but declared that the envelope was not opened until petitioner's return in the early part of March 1966 (A. 112–115).

2. The main defense at trial was that petitioner was not mentally responsible at the time of his failure to

report for induction on or about February 9, 1966. We set forth and discuss the medical testimony on this defense under Point IV, *infra,* pp. 32–37. Suffice it to say at this juncture that the jury found petitioner guilty as charged (A. 140).

SUMMARY OF ARGUMENT

I

The statute under which petitioner was convicted and the pertinent regulation do not require proof that petitioner actually received the order to report for induction. A conviction of knowingly failing to comply with a duty under the Act may be supported by evidence which shows that the defendant was aware of his duty and intentionally failed to satisfy it. The evidence here showed that petitioner twice failed to report for physical examinations. Because of these failures he was declared a delinquent—a classification which, under well-publicized regulations, has the highest priority call of all selectees—and was notified that his previous defaults constituted criminal offenses. Petitioner then wrote a letter to his local board evincing a full awareness of the consequences of his delinquency and advising the board that he was leaving for several months "with no definite forwarding address." After failing to report for a third scheduled physical examination, petitioner left for a two-month trip without advising his mother or the draft board where he could be reached. In the circumstances of petitioner's departure on the eve of his order to

report for induction, the jury reasonably found a knowing and willful failure to comply with the order, which in fact was received at his home just a few days after his claimed departure.

II

In a colloquy initiated by defense counsel at the outset of trial, the court was informed that defense counsel and the United States Attorney had agreed that the prosecution would be discontinued if petitioner would submit to induction. Nothing in the Assistant United States Attorney's representations during that colloquy can be viewed as a present motion to dismiss the indictment. Such a motion would have been unauthorized in the absence of prior approval of the Department of Justice. And there was no suggestion that petitioner had retreated from his stated position that he would not serve in the Armed Forces; he had in no way indicated that at the time of trial he was willing to be inducted into the Army if found qualified.

Even if the colloquy may be viewed as presenting an unarticulated motion for a continuance to determine petitioner's suitability for military service, the trial court did not abuse its discretion in refusing to delay the trial for that purpose. The question of petitioner's mental or physical fitness for military service involved neither an element of the crime charged nor a defense to it. Under applicable regula-

tions, the local board was required to order petitioner to report for induction without a prior finding of fitness—a finding which petitioner made impossible in this case by refusing to report for pre-induction physicals. A delinquent registrant's suitability for military service is to be determined at the time he reports for induction and submits to the induction process. The duty to report for induction cannot be ignored on the ground that the individual thought that he would be found disqualified or was willing to leave that determination to a subsequent criminal trial. The court therefore properly exercised its discretion in refusing to grant a continuance and did not err in limiting cross-examination on the immaterial issue whether petitioner might have been found to be unsuitable for induction.

III

The trial court correctly pretermitted the cross-examination of the clerk of petitioner's local board on the issue whether she was authorized to sign notices to report for induction. Petitioner does not contend that he was improperly selected to report for induction; under the regulations the local board was required to order petitioner for induction before men in any other classification, even volunteers, could be called. The clerk who signed petitioner's notice testified that she had served as clerk of the board for 17 years and had customarily signed such notices. Any irregularity in the clerk's authority to sign the form on behalf of the local board was, at most, a

minor defect in the way in which an admittedly valid duty to report was communicated to petitioner. In the absence of any claim that petitioner was at all prejudiced by such a defect, the challenge to the scope of her actual authority presented no defense to the charge of failing to comply with the duty to report. Furthermore, even if the clerk's authority were material in this case, it presented a question of law for the court. The trial judge properly declined to allow petitioner's counsel to continue that line of questioning before the jury.

IV

All doctors agreed that petitioner was fully cognizant of his duties and understood the consequences of his failure to comply with them. The testimony with respect to petitioner's sanity at the time he failed to report for induction showed, at most, a difference of medical opinion as to whether petitioner was emotionally able to comply with his Selective Service obligations. The evidence hardly compelled a reasonable doubt as to petitioner's sanity as a matter of law. In these circumstances, the conflict of medical opinion as to the impact of petitioner's emotional problem was properly submitted to the jury under admittedly correct instructions. The jury's finding that petitioner was criminally responsible for his conduct is supported by substantial evidence and should not be disturbed.

ARGUMENT

I. THE EVIDENCE SUPPORTS PETITIONER'S CONVICTION OF KNOWINGLY AND WILFULLY FAILING TO COMPLY WITH AN INDUCTION ORDER ISSUED BY HIS LOCAL SELECTIVE SERVICE BOARD

The primary basis of petitioner's contention that the evidence was insufficient to support his conviction is that there was no showing that he actually received the order to report for induction in time for him to comply with it. He refers to testimony which indicates that he was away from his home at the time the induction order was issued and that his mother, who received the order, retained the unopened envelope and did not deliver it to him until he returned from Mexico, about one month after the date on which he was required to report. But even if that testimony is accepted as fact, the absence of evidence that petitioner seasonably received the order did not entitle him to a directed verdict of acquittal.

Petitioner's argument is premised on a misunderstanding of the mental state comprehended by 50 U.S.C. App. 462. Proof of actual receipt of an order is not essential to a finding that the individual "knowingly" failed to comply with the duty which it prescribed. The pertinent regulation (32 C.F.R. 1641.3), which was read to the jury (A. 33), provides:

> It shall be the duty of each registrant to keep his local board advised at all times of the address where mail will reach him. *The mailing of any order, notice, or blank form by the local board to a registrant at the address last reported by him to the local board shall consti-*

> *tute notice to him of the contents of the communication, whether he actually receives it or not.* [Emphasis added.]

This regulation is fully consistent with the statute's command that only a "knowing" disregard of a duty under the Act may be punished. The proper functioning of the Selective Service System, like the collection of taxes and other forms of comprehensive governmental regulation, depends critically on good-faith compliance by each individual. Congress plainly did not contemplate that an individual could disregard the orders of his local board, and escape prosecution, by refusing to accept a letter from the board, or failing to apprise himself of its contents, or placing himself beyond the reach of the process by which the board ordinarily communicates its notices and orders. See *Moorman* v. *United States,* 389 F. 2d 27 (C.A. 5). On the other hand, we do not read the statute and the regulation as authorizing the conviction of an individual who makes himself reasonably amenable to the process of the Selective Service System and whose failure to comply with an order results from the order's being lost or misdirected in the mails, or from some other circumstances not evincing an intentional avoidance on his part. See *Bartchy* v. *United States,* 319 U.S. 484. Failure to receive the order in such a case ordinarily would negate any finding that the individual had the degree of culpability required by the statute, *i.e.,* that he "knew" he was failing to comply with the order. But actual notice of the "contents of the communication" is not required to establish a

knowing failure to comply where the individual was aware of the duty and nevertheless took no action to satisfy it.

The evidence presented at trial was sufficient to support the jury's finding that petitioner knowingly failed to comply with the induction order. Indeed, it showed a course of conduct, culminating in petitioner's failure to report for induction, which evinced a wholesale disregard of his Selective Service obligations and an awareness of the consequences which would follow from his recalcitrance.

In December 1965 and again on January 6, 1966, petitioner failed to report for physical examination in accordance with orders that had been sent to him (A. 28–29). On January 11, 1966, petitioner was declared delinquent by his local board because of his failure to report for the January 6 physical examination. A delinquency notice (SS Form 304) was mailed to his home at 10 Fortin Road and was received by him (G. Ex. 9, A. 63–65). On January 14, a third notice of physical examination was mailed to petitioner, ordering him to report for examination on January 20 (A. 30).

After receiving the delinquency notice, petitioner could hardly have been unaware that his induction was imminent. Selective Service regulations specifically provide that delinquents must be called first, even before volunteers for induction, in satisfying the quota of inductees assigned to each local board (32 C.F.R. 1631.7(a)). Petitioner's awareness of his situation is evidenced by the letter which he wrote to the

local board on January 17, four days after he received the delinquency notice (G. Ex. 6, A. 47–49):

> Your threatening letters continually arrive, telling me exactly what to do and informing me of the penalties for not complying with your directives.
>
> In response, I can only repeat my previous assertions that I am unwilling to be a part of the organized murder and threat of murder which is the basis of any army.
>
> There are better forms of communication than impersonal printed forms filled with orders and threats. * * *
>
> * * * * *
>
> P.S. I am soon going to take a vacation trip of a month or two. I tell you this because my leaving town with no definite forwarding address might otherwise seem evasive. * * *

On January 20, petitioner failed for the third time to report for a scheduled physical examination (A. 30). He subsequently told an F.B.I. agent that he "didn't want to report for the physical examination and yet was aware of threats of what would happen [to him] if he did not" (A. 74). Four days later the local board mailed the order to report for induction (G. Ex. 2, A. 37–38). Petitioner's mother testified that she received the letter on the following day, but that he had already left for New York to visit some friends (A. 112–114).

On the basis of this evidence, the jury could reasonably find that petitioner's failure to report for induction was the final step of a deliberate course of noncompliance with the Selective Service law, in full accord with the views he had expressed as early as

1963, when he returned his classification card to his local board with a document purporting to renounce any obligations he had under the Act (G. Ex. 5, A. 44).[2] This is not a case in which an individual failed to comply with an order which was not anticipated or which failed to reach him through channels reasonably expected to be reliable. Petitioner could not have viewed his induction order as anything but inevitable; indeed, there was testimony from which the jury may have inferred that petitioner in fact was apprised of the receipt of the order at his home. He revealed to his psychiatrist that he knew intellectually "that he was failing to comply to the law but emotionally was unable to get himself to do anything about it" (A. 98; see also A. 95).

Nothing in petitioner's personality disorder (discussed more fully in Point IV, *infra*) suggests that he lacked the intellectual capacity to realize the imminence of the induction order or to form the requisite intent for "knowingly" failing to comply with his obligations. Petitioner is a young man of intelligence who knew intellectually that he was failing to comply with the law (A. 87–88, 98). His defense was that he was emotionally unable to respond properly to situations that he perceived. The level of culpability required under this statute is simply the "usual criminal intent" formed on the basis of an awareness of the facts that make an omission unlawful. See *Graves* v. *United States,* 252 F. 2d 878, 881–882 (C.A. 9); *United States* v. *Hoffman,* 137 F. 2d 416, 419 (C.A.

[2] Compare *Williams* v. *United States*, 203 F. 2d 85, 87 (C.A. 9), certiorari denied, 345 U.S. 1003; see also, *Billings* v. *Truesdell*, 321 U.S. 542, 557.

2); compare *Moorman* v. *United States, supra,* 389 F. 2d at 30. It was thus well within the jury's province to find subjective knowledge on petitioner's part of the obligations he refused to honor. Petitioner himself recognized that his leaving home with no forwarding address might "seem evasive", as indeed it was. He did not tell his mother or the local board where he could be reached in New York. And his first communication with the board—a postcard mailed from Knoxville, Tennessee, one month after he had been declared delinquent and two days after the induction date—stated only: "I'm still thinking about you, and will let you know as soon as I have an address" (G. Ex. 7, A. 50). The jury may have inferred that this was a self-serving statement attempting to conceal actual knowledge of his recent default. But even if the jury believed that petitioner was not informed of the receipt of the registered letter from his draft board, it reasonably could have found that petitioner's departure on the eve of his induction order was a deliberate attempt to avoid actual receipt of the order which he realized was imminent. No more was required for conviction.

II

THE DISTRICT COURT DID NOT ERR IN FAILING TO DISMISS THE INDICTMENT OR IN REFUSING TO GRANT A CONTINUANCE OF THE TRIAL TO PERMIT PETITIONER TO TAKE AN ARMED FORCES PHYSICAL EXAMINATION TO DETERMINE IF HE WAS THEN PHYSICALLY SUITABLE FOR MILITARY SERVICE

Prior to trial, petitioner's counsel filed a motion requesting the trial court to order the Armed Forces Examining and Entrance Station to examine petitioner to determine his suitability at that time for military service (A. 7–8). That motion was denied on

December 1, 1966 (A. 9). Five days before trial, petitioner interposed a defense of insanity (A. 10). On the opening day of trial, the following colloquy took place (A. 20–23):

> Mr. ROGERS [counsel for petitioner]. After being advised to report here for trial at 2 o'clock here this afternoon, myself and John Notte, Esq. [co-counsel for petitioner] had a conference with the United States District Attorney for this District, Mr. Frederick Faerber, Esq., who advised me—and I represent to this Court—in the event that my client, who stands indicted for failure to report for induction were in fact to submit to induction into the military forces of this country, and were found by the Selective Service Authority to in fact be unacceptable, that the United States Attorney's office would in fact move in open court to dismiss the indictment against the defendant.
>
> I make those representations to this Court as my best recollection of the conference with Mr. Faerber, and I ask Mr. Notte to state for the record whether or not this is a fair and accurate representation of the conversation we had.
>
> Mr. NOTTE. This is a fair and accurate representation, your Honor.
>
> Mr. GEARON [Assistant United States Attorney]. Your Honor, the position of the United States Attorney is essentially what Mr. Rogers said. However, it is felt, for the purposes of this record, that the reason for so doing is that the Selective Service takes the position that if a person would report for induction, it is better to have them so report than to be incarcerated in jail in the event of a conviction upon this type of case.

However, because of this case and the situations and the examinations made by psychiatrists, I feel it should be placed in the record one of the considerations for the Government taking this position is that although the man is charged with failure to report for induction—which does not mean necessarily he will become a member of the Armed Forces—it is directing him, as a citizen of the United States within military age, to submit to an induction and physical examination to determine his eligibility for the Armed Forces. That is what this indictment charges him with: failure to report for induction.

The COURT. I thought it charged him with failure to report for examination.

Mr. GEARON. No, failure to report for induction, submit to the induction in the Armed Forces. But because of the uniqueness of this situation and in view of the fact that there has been psychiatric examination of this defendant, and a psychiatric examination by three doctors at the Naval Base in Newport on Friday, January 13, 1967, wherein the conclusion at the end of the examination, signed by the three physicians, psychiatrists—their comment is as follows:

> "From the above history and findings it is the opinion of this board of psychiatric examiners that this person was at the time of any alleged offenses so free from mental defect, disease or derangement as to be able concerning any particular acts charged to adhere to the right. He possesses sufficient mental capacity to understand the nature of any proceedings against him and intelligently to conduct or cooperate in his own defense. It is also the opinion of this

board that this person is unfit for military service."

And it is signed by E. A. Vadeika, Frank M. Moscarillo, and A. H. Schwartz.

I have a further examination conducted by Max Faintych.

The COURT. Would you gentlemen be good enough to make clear to me what this is all about?

Mr. GEARON. This is the position: that if this man submits to induction, in all probability he will not be acceptable anyway. But in view of the fact that he is willing to go down for induction, the Government would take the position—and the United States Attorney has recommended—that there would be no further prosecution because it would really in effect—if he were a person who could be eligible for the Armed Forces, there would be a point in going forward with it. But insofar as this person, while charged with failure to report for induction, which is a serious crime,—

The COURT. Are you ready to go to trial or aren't you?

Mr. GEARON. We would continue it if this man—

The COURT. I see no need of it. Let's try this case and get it behind us. That is my position. Either he is guilty or he isn't.

(Bench conference concluded.)

(Jury impaneled.)

In our memorandum opposing certiorari in this case, we brought the foregoing colloquy to this Court's attention. We stated our view that because of the peculiar circumstances of this case the Assistant United States Attorney acted with wisdom in evinc-

ing a willingness to explore alternatives to prosecution, but we concluded that the trial judge had not abused his discretion in directing that the trial proceed (see Memorandum in Opposition, No. 772 Misc., O.T. 1967, pp. 6–7).

The gist of petitioner's argument appears to be that the trial judge abused his discretion in two ways. First, he suggests, the court should have treated the statement by the Assistant United States Attorney as a motion to dismiss and considered it as such (see Br. 5, "Questions Presented," No. 5). Secondly, he argues that the trial court erroneously determined that a draft registrant could be found guilty of the crime charged in the indictment without ever having had a physical examination to determine his actual physical suitability for military service and incorrectly ruled that suitability was not in issue (Br. 6, "Questions Presented," No. 7).

A. THE UNITED STATES ATTORNEY DID NOT REQUEST DISMISSAL OF THE INDICTMENT

It is clear, we submit, that the remarks of the Assistant United States Attorney in the course of the opening colloquy (*supra,* pp. 16–18) do not amount to a motion to dismiss the indictment. The colloquy was initiated by defense counsel, and its context plainly reveals that it was designed simply to apprise the court of the results of a discussion between the parties as to possible alternatives to pressing the prosecution. For reasons which we shall elaborate *infra,* the alternative discussed, while solicitous, was

misdirected and unauthorized.[3] But since, as explained to the court, the possibility of discontinuing the prosecution turned on two contingencies which had not as yet occurred—petitioner's submission to the induction process and his rejection as unfit for military service (A. 22)—the Assistant's representations can-

[3] A United States Attorney may not move for leave to dismiss a criminal case after indictment unless authorized to do so by the Department of Justice. No request was made in the present case, and accordingly no authorization was given. Moreover, had authorization been requested, it would have been denied in the circumstances.

Undeniably, the ultimate objective of the Selective Service process is not to secure convictions, but to man the Armed Forces of the United States. See *Falbo* v. *United States*, 320 U.S. 549, 551–552. For this reason, the Department of Justice authorizes dismissal of prosecutions against Selective Service violators who are willing to correct their delinquency and submit to all of the induction processes up to the point of acceptance or rejection by the Armed Forces, and who are willing to enter the Army if found qualified. See SSLR Practice Manual ¶ 1104, at 1075. The policy does not extend, however, to those persons (like petitioner) who may be willing to submit to physical examinations, but not to military service; nor does it extend to persons (also like petitioner) who attempt to compromise their guilt by making an offer to submit to physical examinations only after learning that they would be "in all probability" (A. 22) unacceptable for military service.

There is no indication that petitioner ever retreated from his position—made known to an F.B.I. agent (see A. 70)—that he would report for a physical examination but would not actually enter the Army if found qualified. Petitioner's offer through counsel to submit to "induction" (A. 21) did not come until he had learned that three Navy psychiatrists considered him unfit for military service (A. 22). His offer must, therefore, be understood in context as limited to submission to a physical examination only, and in these circumstances, dismissal of the prosecution would not have been authorized by the Department of Justice.

not fairly be construed as a present motion to dismiss, and the court was fully warranted in not so construing them.

Moreover, even when the government wishes to *nol pros* a case, an indictment may be dismissed only "by leave of court". Fed. R. Crim. P. 48 (a). Thus, insofar as we assume *arguendo* that the prosecutor—though without the authority to do so—was seeking dismissal of the indictment, the trial court was acting within its sound discretion in refusing, once the court's processes had been invoked, to permit discontinuance. As the court rather succinctly observed, and the Assistant United States Attorney did not dispute—"Either he is guilty or he isn't" (A. 23). That is, as we show *infra*, pp. 22–29, petitioner's criminal responsibility for refusing to report for induction depended on past events that did not turn upon his acceptability at the time he failed to report or at the time of trial.

B. THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION IN REFUSING TO GRANT A CONTINUANCE SO THAT PETITIONER COULD UNDERGO A PHYSICAL EXAMINATION

In our view, the most that can be said of the colloquy that took place at the opening of trial is that it constituted a motion for a continuance. Such a motion is, of course, addressed to the sound discretion of the court, and denial of the request is not reversible error unless discretion has been plainly abused to the prejudice of the defendant. Here, there was neither abuse nor prejudice. Delay was first suggested to the court after the case had been called for trial. There

was no suggestion that either side was not ready for trial on the merits. In light of what we have said with respect to the court's discretion to deny a request by the government that the case be dismissed (*supra*, p. 21), it follows *a fortiori* that it was within the scope of the court's responsible judgment to refuse to concur in a delay designed solely to ascertain a state of facts that the court would not have accepted as a basis for dismissing the indictment. Nor can petitioner point to any prejudice. Petitioner's mental and physical suitability for acceptance into the Armed Forces involved neither an element of the offense with which he was charged nor a defense to it. He therefore has no basis for protesting the trial court's refusal to postpone the trial for an immaterial test to determine whether the Army would actually have accepted him.

C. THE QUESTION OF PETITIONER'S SUITABILITY FOR MILITARY SERVICE WAS NOT A MATERIAL ISSUE AT TRIAL

Petitioner contends that his suitability for military service was a critical issue in his case and that it was error for the court to deny (A. 9) his motion for a mental examination on this question (A. 7–8) and to preclude cross-examination (A. 128, 131–132) on the point (Br. 7, 24–25, 29). This argument misapprehends the elements of the offense of which petitioner stands convicted.

1. Under 50 U.S.C. App. 462(a), which he was convicted of violating, petitioner's offense was his deliberate failure to perform a duty imposed pursuant to the Universal Military Training and Service Act, namely, his failure to comply with the order of his local Selective Service board "to submit to induction into the Armed Forces" (A. 6).

While it is true that the final transition from civilian to military life cannot be effected "until his [the selectee's] acceptability in all respects, including his physical and mental fitness, has been satisfactorily determined under standards prescribed by the Secretary of Defense" (50 U.S.C. App. 454(a)), it by no means follows that a person cannot violate his obligation to comply with an order to report for and submit to induction unless he has previously been found suitable for service or is at least suitable in fact.

The content of petitioner's obligation is, of course, a question of law, and in ascertaining whether the absence of a determination of his suitability was material we must turn first to the implementing regulations. Of special relevance to this case is the Selective Service regulation governing the priority the local board must follow in ordering its registrants to report for induction. This regulation declares the general rule that in filling its quota the board shall call up registrants who have been classified I–A or I–A–O *and* have been found acceptable for service in the Armed Forces and been mailed a Statement of Acceptability at least three weeks prior to the date fixed for induction. But the regulation then continues (32 C.F.R. 1631.7(a)):

> *Provided,* That a registrant classified in Class I–A or I–A–O who is delinquent may be selected and ordered to report for induction to fill an induction call notwithstanding the fact that he has not been found acceptable for service in the Armed Forces and has not been mailed a Statement of Acceptability (DD Form No. 62) * * *.

See also, 32 C.F.R. 1628.10. Since petitioner concedes that he was properly classified I–A and does not dispute that he was validly declared a delinquent (Br. 6–7), his local board was expressly directed to order him to report for induction even though he had not previously been found suitable for service. The facts of this case amply illustrate the reason for this authority: before he was ordered to report for induction petitioner had three times failed to appear for pre-induction physical examinations at which his acceptability would have been considered. The regulation was plainly designed to prevent such recalcitrance from immunizing a delinquent registrant from his obligation to take his place in filling a manpower quota.

Nor is this procedure inconsistent with the statute on which petitioner relies. Although the term "induction" is not defined in the Act, the pertinent Selective Service regulations make it clear that the registrant's duty to report for and submit to induction in compliance with an order of his local board includes participation in the induction *process,* even though the process may not actually culminate in entry into the Armed Forces. Thus, in dealing with the "Duty of [the] registrant to report for and submit to induction", and after providing that the registrant is to appear when and where directed by the local board, the relevant regulation specifies that (32 C.F.R. 1632.14):

> (b) Upon reporting for induction, it shall be the duty of registrant * * * (3) to appear at the place where his induction will be accomplished, * * * (5) to submit to induction, *and*

> (6) *if he is found not qualified for induction,* to follow the instructions of the representatives of the Armed Forces as to the manner in which he will be transported on his return trip to the local board. [Emphasis added.]

Hence, compliance with the mandate of Congress that only those qualified actually enter military service is finally and decisively assured *as a part of* the induction process itself. See also, 32 C.F.R. 1632.20 (a)(3), (b)(3), 1632.30. That the individual registrant may ultimately be found not fit to take the final "one step forward" in no way excuses a deliberate refusal to honor the order. Insofar as petitioner may be contending that a registrant cannot be accused of failing to "submit" to induction when he has not had a physical examination—even though the absence of such an examination is the result of his own refusal to appear for any scheduled examinations, including the one routinely given when a selectee reports for induction—his objection misunderstands and unduly narrows the scope of the duty to "submit to induction". This duty comprehends, *inter alia,* submission to the examination on the day of induction, at which the registrant's suitability for service is finally and decisively determined. See *Williams* v. *United States, supra,* 203 F. 2d at 87.

This analysis of the duty that petitioner failed to meet is confirmed by the relevant Army Regulations, which mesh with those of the Selective Service System.[4] Army Regulation (AR) 601-270, para. 13 (1965), provides in pertinent part:

[4] Army Regulations, like those of the Selective Service System, have the "force of law". *Standard Oil Co.* v. *Johnson,* 316 U.S. 481, 484.

> *Definitions.* For the purpose of this regulation [dealing with the operation and functions of armed forces induction stations], the following definitions will apply:
>
> * * * * *
>
> g. *Induction.* The procedure consisting of the physical inspection (or, if appropriate, the complete medical examination), mental testing (if not already accomplished), the completion of records and necessary processing to complete the transition from civilian to military status, for a period of defined obligation under the provisions of the Universal Military Training and Service Act, as amended.[5]

Here, too, the term induction is used to comprehend a cluster of elements, in addition to actual entry into the Army. It contemplates all of those procedures (excluding those performed by the Selective Service System) conducted at the induction station by members of the Armed Forces. For those who, like petitioner, have been declared delinquent because of their failure to report for pre-induction physical examinations, those procedures are clearly defined. In line with the statute upon which petitioners rests his argument (50 U.S.C. App. 454(a)), Army Regulation 601–270, para. 40(e)(2), provides that a delinquent must be physically examined in order to determine his suitability for service.[6] In the event he is found to be physically qualified for military service, he is then processed

[5] Compare *Billings* v. *Truesdell*, 321 U.S. 542, 547–548, where on the facts of that case the Court found induction to be the end of the process at the induction station—*i.e.*, taking the ceremonial step forward and becoming a member of the Armed Forces.

[6] See also, AR 601–270, para. 68(1).

in the normal manner (AR 601–270, para. 40(a)(3)). That process includes an induction orientation talk, roll call, physical inspection, and finally the transition from civilian to military life by taking the ceremonial step forward. Petitioner's crime thus consisted not only of failing to take the "final step", but also of his failing to submit to the physical examination which was a normal incident of induction for those who had been declared delinquent.[7]

In short, insofar as petitioner suggests that he could not have been compelled to report for "induction" and to enter the Armed Forces if qualified, because his physical suitability had not been previously determined, that contention is refuted by applicable regulations. *Moorman* v. *United States*, 389 F. 2d 27, 31 (C.A. 5); *Williams* v. *United States*, 203 F. 2d 85, 87 (C.A. 9), certiorari denied, 345 U.S. 1003.

2. Petitioner's contentions that the trial court erred in refusing to order that he be examined before trial for suitability and in precluding cross-examination on that issue must also be rejected for the same reason. The trial court properly viewed the dispositive question, not as whether petitioner would have been found physically suitable to perform his military obligation had he reported to the induction center as directed, but as whether he knowingly failed to comply with the duty to report for induction (A. 128). Unsuitability in fact is not a defense to such a charge. If it were, the same logic would demand acquittal

[7] See also, SSLR Practice Manual ¶1127, at 1083: "A registrant who wishes to challenge the legality of the * * * induction process as applied to him should report for induction and take all the steps up to the step forward which puts him into the armed forces." Cf. *Estep* v. *United States*, 327 U.S. 114.

of a young man who refused even to register with a local board, if he could establish that some physical malady would actually have made him unacceptable for service. Or, by parity of reasoning, a registrant would have a valid defense to a charge that he deliberately destroyed his draft card if he established that for physical or psychological reasons the Army would not have taken him. Apart from the ultimate question of whether the particular individual will actually serve, there is the distinguishable though related question of *how* that decision is to be made. With reference to the statutory requirement that a registrant not wilfully destroy his draft card, this Court recently observed: "the continuing availability to each registrant of his Selective Service certificates substantially furthers the smooth and proper functioning of the system that Congress has established to raise armies." *United States* v. *O'Brien,* 391 U.S. 367, 381. By the same token, "the smooth and proper functioning" of the system which must process thousands of men monthly demands that all registrants comply with the procedures that petitioner chose to flout in this case. It requires no elaborate argument to demonstrate the wholly disruptive consequences of permitting a registrant to ignore his local board's order that he present himself for possible entry into the Armed Forces, where he personally believes he is not acceptable for service and is willing to try to establish this condition later at a criminal trial. The Selective Service System and the Army have carefully detailed procedures for efficiently determining suitability for service (*supra,* pp. 23–27). The obligation to follow those procedures is settled by Act of

Congress,[8] and it would hardly accord with the congressional plan for raising armies to sanction deliberate repudiation of the administrative machinery by allowing a registrant to show in some later proceeding that, had he complied, he would not have been accepted. See *United States* v. *Irons,* 369 F. 2d 557, 558–559 (C.A. 6); compare *United States* v. *Collura,* 139 F. 2d 345 (C.A. 2).[9]

III.

THE TRIAL COURT PROPERLY TERMINATED A LINE OF INQUIRY DEALING WITH THE AUTHORITY OF THE CLERK OF THE LOCAL BOARD TO SIGN INDUCTION NOTICES

The induction notice to which petitioner refused to respond was signed by Mrs. Thelma Taylor, Clerk of Local Board No. 4. On cross-examination, petitioner attempted to challenge her authority to sign induction notices (A. 53–56). The trial court—satisfied that Mrs. Taylor had been clerk of the board for approximately 17 years, and had "customarily" (A. 55) signed induction notices in that capacity—terminated further inquiry into this matter. Petitioner argues that the validity of an induction order may be subject to attack,[10] and from this premise contends that the

[8] 50 U.S.C. App. 462(a), under which petitioner was convicted.

[9] Analogously, our jurisprudence recognizes no defense in a prosecution for practicing law or medicine without a license that, if the defendant had taken the appropriate examination, he would have proven himself qualified.

[10] But see Brief for Petitioner, p. 6.

validity of the order to report in this case turns upon Mrs. Taylor's authority to sign induction notices, and that the restriction of cross-examination in this area thus constituted reversible error. This argument must fall for two distinct reasons.

First, petitioner overlooks what we believe to be a critical distinction between the order itself and the form in which it is communicated to the particular selectee. Upon receipt of a monthly Notice of Call for a specified number of men to be delivered for induction, each local board must make a determination of those who are to be ordered to report (32 C.F.R. 1631.7). Unlike the situation with respect to classification, the local board's role in selecting men to meet its quota is largely ministerial. Selective Service regulations specify in precise detail the order in which the local board must call up men to fill its quota. 32 C.F.R. 1631.7(a). Indeed, under the provision of 32 C.F.R. 1631.7(a)(1), the inclusion of petitioner in the call was mandatory, since declared delinquents—which category concededly included petitioner—are first in priority and must be ordered to report even before volunteers may be accepted. Since there can be no contention that petitioner was not validly—indeed, necessarily—selected for induction by the local board, we fail to see how the legality of the order can be affected by the internal procedural detail that the communication of the order to the selectee was in fact

signed by the clerk of the board. Although a Selective Service regulation (32 C.F.R. 1604.59), to which petitioner does not allude, provides that the official papers of a board may be signed by the clerk if authorized to do so by resolution of the board transcribed in the minutes,[11] the courts have uniformly held that this procedure is directory rather than mandatory and have invariably held that no substantial rights are affected when the clerk signs the notice, even in the absence of proof of a formal board resolution. *E.g., United States* v. *Lawson,* 337 F.2d 800, 812 (C.A. 3), certiorari denied, 380 U.S. 919; *Talcott* v. *Reed,* 217 F.2d 360, 364 (C.A. 9). Thus, absent a showing of prejudice—and petitioner neither contends nor shows prejudice here[12]—a claim that the clerk was not authorized to sign the induction notice is not a defense to prosecution for disobeying the order to report. *Kent* v. *United States,* 207 F.2d 234 (C.A. 9); *Smith* v. *United States,* 157 F.2d 176, 181–182 (C.A. 4), certiorari denied, 329 U.S. 776; *United States* v. *Fratrick,* 140 F.2d 5, 6–7 (C.A. 7).

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[11] 32 C.F.R. 1604.59 provides:

"Signing official papers.

"Official papers issued by a local board may be signed by the clerk of the local board if he is authorized to do so by resolution duly adopted by and entered in the minutes of the meetings of the local board, provided, that the chairman or member of the local board must sign a particular paper when specifically required to do so by the Director of Selective Service."

[12] Indeed, petitioner specifically concedes that his classification was in all respects proper (Br. 6–7), even though his notice of classification was signed by Mrs. Taylor as clerk (G. Ex. 5).

Second, the trial judge was fulfilling his responsibility when he ruled the questioning immaterial, because the issue counsel sought to raise was in no event pertinent for exploration before the jury. It has consistently been held that the validity of the order to report is a question of law for the trial court alone and for this reason it is not error to refuse to receive evidence on this question before a jury. *United States* v. *Tucker,* 374 F. 2d 731, 734 (C.A. 7); *United States* v. *Norris,* 341 F. 2d 527, 530–531 (C.A. 7), certiorari denied, 382 U.S. 850; cf. *Estep* v. *United States,* 327 U.S. 114, 122–125. The only issues for the jury were whether the board in fact ordered petitioner to report for and submit to induction and whether he deliberately failed to report and submit as ordered. The ruling of the trial judge terminating an immaterial line of questioning in the jury's presence was, therefore, sound.[13]

IV

THE EVIDENCE DID NOT ESTABLISH INSANITY AS A MATTER OF LAW

Petitioner's principal defense at trial was that his mental condition at the time of the failure to report for induction relieved him of criminal responsibility for his conduct. He recognizes (Br. 34) that the question of sanity *vel non* is a question of fact for the

[13] Petitioner did not make any proffer of proof bearing on Mrs. Taylor's authority to sign the induction notice, and thus, even assuming *arguendo* that her authority was relevant to the validity of the order, petitioner did not adequately raise the issue for determination by the court.

jury and expressly concedes (Br. 35) that the issue was submitted to the jury under proper instructions which he himself had requested and formulated.[14] His only contention is that "the facts when applied to the law of this case[,] namely the American Law Institute rule[,] would not permit a finding of guilty." On the contrary, we submit, the evidence was more than sufficient to sustain the jury's verdict.

The defense case turned on the testimony of two witnesses. The first, Dr. Alfred Quartaroli, a psychiatrist who had begun treating petitioner about a month and a half after his failure to report for induction, and who had been examining him on a weekly basis since then, testified (as we have noted, *supra,* p. 14) that petitioner came to see him because "he was concerned about his failure to answer the draft call and had mixed feelings about this situation" (Tr. 197.)[15]

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[14] Petitioner requested that the following charge—identical to that formulated by the American Law Institute as Section 4.01 of the *Model Penal Code* (Proposed Official Draft (1962))—be given to the jury on the issue of insanity (A. 142):

"A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law."

With the exception of the substitution of the word "wrongfulness" for "criminality"—with which petitioner has no argument, and which substitution has been adopted by the Second and Seventh Circuits, *United States* v. *Freeman*, 357 F. 2d 606 (C.A. 2); *United States* v. *Shapiro*, 383 F. 2d 680 (C.A. 7)—the trial court instructed the jury exactly as requested (A. 137).

[15] "Tr." references are to the original trial transcript, which is on file with the Clerk of this Court.

After detailing petitioner's emotional history as petitioner had recounted it to him, the doctor noted that petitioner had suffered from depression "off and on most of his life" and that petitioner had told him that "he had been depressed severe enough to think about suicide even before he received his draft notice" (Tr. 210–211; A. 89). Dr. Quiartaroli further testified that as a "defense mechanism" against the unwelcome prospect of regularized Army life petitioner had denied the "gravity and severity" of "not following through what he was supposed to do"—"to comply to the requests made for induction" (A. 95). He stated that petitioner had known "intellectually" the wrongfulness of his failure to comply with the order to report for induction, but that petitioner had told him he had been "emotionally" unable to comply (A. 98–99). Dr. Quartaroli was of the view that petitioner's "mixed-up feelings" consisted of "conflict between his intellectual self, his knowing self, which knew that certain things should be done, such as he should study, he should achieve academically, he should reply to the draft notice, he should report for induction; and the emotional self, which stood in the way of accomplishing these facts" (Tr. 252). He concluded that at the time of his failure to report for induction, "because of his emotional condition [petitioner] was unable to comply with the requirements of the law," and that once he had failed to report for the earlier physical examinations, he was unable to change his conduct and comply with the later induction order (A. 106). Throughout his testimony Dr. Quartaroli made clear,

however, that petitioner, who suffered no organic brain damage (A. 109–110), was able to appreciate the difference between right and wrong and the consequences of wrongful action, and was not subject to compulsion (A. 111, 112). It was Dr. Quartaroli's belief that petitioner was suffering from "an emotionally unstable personality", which he regarded as a "mental disorder" (A. 109, 110, 112).

The other medical witness testifying for the defense was Dr. Morton Silverman, a clinical psychologist. He testified that he had given petitioner various psychological tests in September 1966 (A. 119). Based on these tests and other information, Dr. Silverman was of the opinion that petitioner had an "emotional problem" that enabled him to perform well "in a limited number of situations in which he felt comfortable" but that made him unhappy or uncomfortable with many everyday situations that for most people would be routine (A. 120–121).

In rebuttal, the government called Dr. Edward Vadeika, a Navy psychiatrist who had examined petitioner on January 13, 1967, for about one hour in the presence of two other Navy doctors (A. 122, 126). Dr. Vadeika agreed that petitioner suffered from emotional problems manifesting anxiety, depression, poor motivation, and resentment toward authority, but was of the view that petitioner was "able to distinguish the difference between right and wrong, and also to be able to adhere to the right" (A. 123–124). In his opinion, petitioner did "not lack substantial capacity to appreciate the wrongfulness * * *

of his behavior or to conform his behavior to the requirements of the law" (A. 125–126).

Petitioner's claim that on this record the jury was obliged to return a verdict of *not guilty by reason* of insanity is baseless. Both the government and defense psychiatrists agreed that petitioner had the substantial capacity to appreciate the wrongfulness of his conduct (A. 111–112, 125–126). And although Dr. Quartaroli and Dr. Vadeika disagreed about whether petitioner had the substantial capacity to conform his conduct to the requirements of the law (A. 105, 106, 111–112, 125–126), assessments of the significance of the differing diagnoses was properly left to the jury. Since in this case the weight to be accorded to the medical testimony depended critically on the reliability and comprehensiveness of the version of the underlying events expressed by the patient and accepted by the psychiatrist, a favorable medical diagnosis can scarcely create a reasonable doubt of sanity as a matter of law. In addition, the appropriateness of leaving final resolution of a factual issue to the jury, reviewable only for clear error, is especially clear in cases like this, where the jury must make a delicate judgment on the criminal responsibility of their peer for his conduct. Since there was at most a difference of professional opinion about the impact of petitioner's "emotional problem," the jury's determination that he is accountable for his conduct should be respected. See *e.g., Washington* v. *United States,* 390 F. 2d 444 (C.A.D.C.); *King* v. *United States,* 372 F. 2d 383 (C.A.D.C.); *Birdsell* v.

United States, 346 F. 2d 775 (C.A. 5), certiorari denied, 382 U.S. 963; *Merrill* v. *United States,* 338 F. 2d 763 (C.A. 5).[16]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

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OCTOBER 1968.

[16] Petitioner also asks this Court (Br. 30–35) to announce a general rule on the issue of insanity to be applied in all circuits. Since petitioner admits that he was tried under the standard he wishes to see applied generally, he is not in a position to ask this Court to resort to dictum to promulgate something as critical as a single formulation of the insanity test. In addition, we note that this Court has consistently refused to entertain certiorari petitions even where the issue as to the standard of mental responsibility was raised in a proper context. A sound reason for this course was recently expressed by Mr. Justice Marshall, who stressed that the formulation of a hard and fast rule at this time "would reduce, if not eliminate, that fruitful experimentation, and freeze the developing productive dialogue between law and psychiatry into a rigid constitutional mold." *Powell* v. *Texas,* 392 U.S. 514, 536–537. Even if the Court were to rely only on its supervisory power over the federal courts, the stultifying effect of imposing a single permissible approach to this complex problem would have similarly undesirable consequences.

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PHILLIP JEROME STILES, PETITIONER

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI

ERWIN N. GRISWOLD,
Solicitor General,

Department of Justice,
Washington, D. C., 20530.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 772 Misc.

PHILLIP JEROME STILES, PETITIONER

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
AND ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION
TO THE GRANTING OF THE PETITION FOR A
WRIT OF CERTIORARI

Petitioner was tried before a jury in the United States District Court for the District of Rhode Island and was found guilty of failure to comply with an order of a local Selective Service board to submit to induction into the armed forces, in violation of 50 App. U.S.C. 462 (R. 1, 429). On March 17, 1967, he was sentenced to imprisonment for two years (R. 448). The court of appeals affirmed without opinion on September 20, 1967.

Petitioner was classified 2-S, with a student deferment, in October 1964. On November 9, 1965, having left college, he was reclassified 1-A. Notice of this reclassification was mailed to him on November 17, 1965 (R. 42).

Petitioner was twice ordered to report for physical examinations but he failed to appear on either occasion (R. 42-44). He was sent a delinquency notice on January 11, 1966 (R. 44), and on January 14

he was ordered to report for a pre-induction physical examination to be held on January 20 (R. 45).

Thereafter, on January 17 petitioner wrote the local board a letter to which he appended this notation: "P.S. I am going to take a vacation trip of a month or two. I tell you this because my leaving town with no definite forwarding address might otherwise seem evasive. Don't worry, I'll send you post cards letting you know how I'm getting along" (Gov. Ex. 6; R. 437). On January 20 the local board mailed petitioner still another delinquency notice since he failed to report for a physical examination on that date (R. 45).

On January 24, 1966, the clerk of the local board sent by registered mail a notice to report for induction on February 9, 1966, addressed to petitioner at 10 Fortin Road, Kingston, Rhode Island, (the address given in his current-information questionnaire) (Gov. Ex. 2; R. 433, 45, 47-48, 55, 57-58). Petitioner's mother signed for the receipt of this order (Gov. Ex. 2; R. 433, 310). Petitioner, however, failed to report for induction as ordered (R. 45-46, 135).

On February 14, five days after petitioner was scheduled for induction, the local board received a post card from Knoxville, Tennessee, signed by petitioner, advising the Board: "I'm still thinking about you and will let you know as soon as I have an address" (Gov. Ex. 7; R. 438). On February 21, the local board received a post card from petitioner giving a Mexican address (Gov. Ex. 8; R. 439). Petitioner's mother testified that when he returned home on about March 15, 1966, she gave him the induction order, which she had not opened (R. 310-312).

DISCUSSION

1. Petitioner offered a defense of mental incompetency. Dr. Quartaroli, a psychiatrist who started treating petitioner after March 22, 1966 (R. 193), testified as a defense witness that at the time in question (February 9, 1966) petitioner's emotional condition

rendered him unable to conform his conduct to the requirement of the law that he appear for a physical examination, despite his ability to understand intellectually the seriousness of the offense (R. 259-262), and his capacity to distinguish between right and wrong (R. 282). Dr. Silverman, a psychologist, testified as a defense witness that petitioner was suffering from an emotional problem of a depressive nature (R. 350, 372).

Dr. Vadeika, a Navy psychiatrist who examined petitioner in the presence of two other Navy doctors on January 13, 1967, testified as a government rebuttal witness. (R. 377, 379, 384-385, 395-396). It was his opinion that at the time in question petitioner was emotionally disturbed but not suffering from a mental disease or defect; that he was able to distinguish right from wrong and to adhere to the right; and that he did have substantial capacity to appreciate the wrongfulness of his conduct and to conform his conduct to the requirements of the law (R. 380-383). Petitioner concedes that the trial court properly instructed the jury on the defense of incompetency (Pet. 28; see R. 424-427), but contends that the jury "arrived at the wrong verdict." This assertion does not raise an issue appropriate for this Court to review.

2. Petitioner also argues that there was no culpable intent to evade the orders of the Selective Service board; this issue, also, was one for resolution by the jury. The court instructed the jury that it had to find wilfulness and specific intent on petitioner's part in failing to submit to induction (R. 425-427). The evidence demonstrated that petitioner repeatedly failed to obey orders to report for pre-induction physical examinations and deliberately absented himself from his residence at 10 Fortin Road (the only official address he had given the local board) at a time when he had reason to believe that an order to report for induction was imminent. Manifestly, petitioner could not insulate himself from criminal liability by the simple expedient of leaving his regular residence. From all the attendant circumstances, the jury was warranted in inferring criminal intent. See Silverman v. United States, 220 F. 2d 37, 40 (C.A. 8); Williams v.

United States, 203 F. 2d 85, 87 (C.A. 9), certiorari denied, 345 U.S. 1003.

3. The trial court did not abuse its discretion by limiting the scope of the cross-examination of government witnesses. Counsel for petitioner, on cross-examination, sought to probe the authority of the clerk of the local board to sign the induction notice. The court properly ruled that the question of her authority could only be challenged by an administrative appeal, and not by a collateral attack in this prosecution (R. 86-88). See Kaline v. United States, 235 F. 2d 54, 62 (C.A. 9). The trial court also acted properly in precluding cross-examination of Dr. Vadeika, the government psychiatrist, as to petitioner's physical fitness for military service, ruling that the sole question at issue was whether there had been a wilful failure to report for induction (R. 388-389). Whether petitioner would or would not have been accepted had no bearing on the lawfulness of his failure to report in the first instance.

4. The Solicitor General is concerned with another aspect of the case. In order that this may be fully understood, it is desirable to quote here the following material which appears at the beginning of the transcript (R. 29-33), being the proceedings at the opening of court on Tuesday, January 17, 1967:

> MR. ROGERS [counsel for the defendant]. After being advised to report here for trial at 2 o'clock here this afternoon, myself and John Notte, Esq. had a conference with the United States District Attorney for this District, Mr. Frederick Faerber, Esq., who advised me--and I represent to this Court--in the event that my client, who stands indicted for failure to report for induction were in fact to submit to induction into the military forces of this country, and were found by the Selective Service Authority to in fact be unacceptable, that the United States Attorney's office would in fact move in open court to dismiss the indictment against the defendant.
>
> I make those representations to this Court as my best recollection of the conference with Mr. Faerber, and I ask Mr. Notte to state for the record whether or not this is a fair and accurate representation of the conversation we had.

MR. NOTTE [co-counsel for defendant]. This is a fair and accurate representation, your Honor.

MR. GEARON [Assistant United States Attorney]. Your Honor, the position of the United States Attorney is essentially what Mr. Rogers said. However, it is felt, for the purposes of this record, that the reason for so doing is that the Selective Service takes the position that if a person would report for induction, it is better to have them so report than to be incarcerated in jail in the event of a conviction upon this type of case.

However, because of this case and the situations and the examinations made by psychiatrists, I feel it should be placed in the record one of the considerations for the Government taking this position is that although the man is charged with failure to report for induction--which does not mean necessarily he will become a member of the Armed Forces--it is directing him, as a citizen of the United States within military age, to submit to an induction and physical examination to determine his eligibility for the Armed Forces. That is what this indictment charges him with: failure to report for induction.

THE COURT: I thought it charged him with failure to report for examination.

MR. GEARON. No, failure to report for induction, submit to the induction in the Armed Forces. But because of the uniqueness of this situation and in view of the fact that there has been psychiatric examination of this defendant, and a psychiatric examination by three doctors at the Naval Base in Newport on Friday, January 13, 1967, wherein the conclusion at the end of the examination, signed by the three physicians, psychiatrists,--their comment is as follows:

> From the above history and findings it is the opinion of this board of psychiatric examiners that this person was at the time of any alleged offenses so free from mental defect, disease or derangement as to be able concerning any particular acts charged to distinguish right from wrong and to be able concerning any particular acts charged to adhere to the right. He possesses sufficient mental capacity to understand the nature of any proceedings against him and intelligently to conduct or cooperate in his own defense. It is also the opinion of this board that this person is unfit for military service.

And it is signed by E.A. Vadeika, Frank M. Moscarillo, A. H. Schwartz.

I have a further examination conducted by Max Faintych.

THE COURT. Would you gentlemen be good enough to make clear to me what this is all about?

MR. GEARON. This is the position: that if this man submits to induction, in all probability he will not be acceptable anyway. But in view of the fact that he is willing to go down for induction, the Government would take the position--and the United States Attorney has recommended--that there would be no further prosecution because it would really in effect--if he were a person who could be eligible for the Armed Forces, there would be a point in going forward with it. But insofar as this person, while charged with failure to report for induction, which is a serious crime,--

THE COURT. Are you ready to go to trial or aren't you?

MR. GEARON. We would continue it if this man--

THE COURT. I see no need of it. Let's try this case and get it behind us. That is my position. Either he is guilty or he isn't.

(Bench conference concluded)

(Jury impaneled)

In the view of the Solicitor General, the Assistant United States Attorney acted wisely in expressing a willingness to explore avenues alternative to prosecution. Although the defendant has been found not to have been "insane," as that term is used in the law, there was some reason to think that he was in fact so disturbed that his conduct, though unjustified, may not have warranted criminal prosecution and incarceration if he had, even though belatedly, complied with the requirements of the Selective Service Act.

However, there does not seem to be any basis upon which these views are relevant at this time. The statement by counsel for the petitioner did not amount to a formal motion for a continuance; and even if it is treated as a motion for continuance, the question whether a continuance should be granted is a matter for the discretion of the district court. That court did exercise its discretion here, though perhaps hastily.

Nor can it be said that prosecution of the case was in any way inconsistent with Departmental policies or directives as communicated to the United States Attorneys. When a registrant commits a

violation of the Selective Service laws but "corrects" that delinquency by actually entering into military service, it is the policy of the Department of Justice to refrain from prosecution or, if prosecution has already been instituted, to seek leave of court to dismiss the indictment. It is not the general policy, however, to refrain from prosecution merely because it appears that the delinquent registrant might have been rejected, or might be rejected, if he sought to comply with his Selective Service obligations.

In the instant case, it does not appear that the registrant made any effort to correct his delinquency between March 15, 1966, when he returned to his home, and the eve of trial in January, 1967, when his counsel intimated that petitioner would or might be prepared to submit for induction--a suggestion which was made only after it had become apparent that petitioner would doubtless prove unacceptable for military service. Prosecution in such circumstances does not represent a departure from policies regularly applied by this Department.

In sum, no basis has been found upon which, at this stage, the matter can be taken out of the channels of the law.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1967.